

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: McInnes Cooper v. Dillman, 2007 NSSM 92

Between:

**MCINNES COOPER**

**APPLICANT**

- and -

**ELWOOD DILLMAN**

**RESPONDENT**

This matter came before the Small Claims Court as a taxation of a law firm's account. The only issue that is being placed before this taxation, by the Respondent Elwood Dillman, is the lawfulness of this account. The Respondent bases his challenge on two pillars: (1) there never was an agreement between himself and George W. MacDonald Q.C., of the Applicant law firm with respect to paying the account and (2) he was of the clear understanding that the settlement reached between the law firm and the Daily News concerning a defamation action included payment of all costs associated with the matter.

James T. White, Elwood Dillman and a third party were seeking recourse against the Daily News newspaper for what they considered defamation.

Mr. White, a member of the bar, contacted George MacDonald Q.C., and requested that he deal

with the matter. Mr. White's recollection was that at the beginning he agreed, Mr. Dillman and he would incur the legal costs of MacDonald Q.C., taking the matter on behalf of all three of them. Mr. White gave testimony that he discussed this with Mr. Dillman. MacDonald Q.C., after being contacted by White, then contacted the other two parties to ensure they would be represented by him. Dillman sent an email (Exhibit A-1) to MacDonald Q.C. requesting him to proceed on his behalf and incorporated with this email was confirmation that Dillman and White would be covering MacDonald Q.C.'s costs.

The matter ultimately settled and the Daily News agreed to resolve the matter with an apology, retraction of its article and payment of \$1500.00. Prior to settlement, MacDonald Q.C. contacted the three parties to obtain their approval. They agreed and MacDonald Q.C.'s firm worked with White on the wording of the retraction and apology.

White, made the assumption that the \$1500.00 covered all costs and conveyed this to Dillman.

The simple question before me is this, what was the agreement between Dillman and the Applicant? The agreement from the beginning was that Dillman and White would cover the Applicant's costs. There is nothing to indicate the Daily News was to pay for the legal account of the aggrieved parties. Where this got off track was when MacDonald Q.C.'s letter to the Daily News made an offer whereby the Daily News would "provide payment of \$1,500.00 for the reasonable costs of retaining and instructing Counsel". White apparently took this to mean all costs as the letter did not say payment of \$1,500.00 as a contribution towards reasonable costs of retaining and instructing Counsel and dealing with the matter.

I have reviewed the account notwithstanding Mr. Dillman has considered it reasonable. I find the account within the range of what is reasonable based on the experience of Counsel and co Counsel handling the matter and what was completed on this file which included commencing and discontinuing an action in the Supreme Court of Nova Scotia and ensuing negotiations involving all four parties. **I hereby certify** the account in the amount of \$4,250.00 legal fees, disbursements of \$261.32, HST on legal fees of \$637.50 and on disbursements of \$12.95, for a total of \$5,161.77. There was \$1,500.00 paid on these legal fees and disbursements, which left remaining \$3,661.77. James White paid his fifty percent in the amount of \$1,830.89 and Elwood Dillman was left with \$1,830.88 which remained outstanding and which resulted in the account being taxed. My Order will therefore allow payment of the Dillman amount and costs of this taxation.

**THEREFORE**, pursuant to the provisions of the Small Claims Court Act, **IT IS HEREBY ORDERED** that Elwood Dillman pay McInnes Cooper the following sums:

\$1,830.88	
\$ 160.74	Cost of Service
<u>\$ 80.00</u>	Court Costs
\$2,071.62	

Dated at Halifax, Nova Scotia, this 8th day of January, A.D., 2007.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia