Claim No: 44437

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
AND IN THE MATTER OF A TAXATION

Cite as: Proost v. Bunford, 2016 NSSM 56

BETWEEN:

MICHAELA A. PROOST

Applicant

- and -

DOMINIC A. BUNFORD

Respondent

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on July 19, 2016, written submissions received thereafter.

Decision rendered on September 27, 2016

APPEARANCES

For the Applicant	John Keith, Q.C.
For the Respondent	Basile Chiasson, C.R.

BY THE COURT:

1. This is a companion decision to that in SCCH-44433 *(Bunford v. Bunford)* which is being rendered at the same time, despite having been heard some months earlier. The two taxations were originally to be heard consecutively in March 2016, but for reasons that are not germane there was a several month delay in getting this one heard.

2. Both proceedings were taxations of bills of costs on a solicitor and client basis, pursuant to the direction of Justice Moir of the Supreme Court of Nova Scotia in his decision on costs dated July 30, 2015 *(Molhant Proost v. Ferncroft Equities Ltd.*, 2015 NSSC 231). The operative paragraph of that decision (also reflected in a separate order) is this:

> [110] I will order that Mr. Bunford pay Ms. Molhant Proost's costs and Mde. Bunford's costs on a solicitor and client basis in all three proceedings to be taxed by an adjudicator. I dismiss Ms. Molhant Proost's claim for an indemnity against amounts paid by Ferncroft or Coloony to their lawyers in connection with the three proceedings.

3. It is the bill of costs of Ms. Proost (and <u>not</u> Mde. Bunford) that occupies this decision.

4. At the risk of being redundant, I will repeat parts of what I have said in the other decision, which was written first, as each of the decisions should make sense individually.

5. The Applicant, Ms. Michaela A. Molhant Proost is the sister of Mr. Dominic A. Bunford, who commenced the subject litigation in Nova Scotia. They

are both in their 40's. Their mother, Mde. Marie-Claude Bunford, a woman in her 60's (I believe) was eventually drawn in to protect her interests and was represented by the Merrick Jamieson firm. To avoid confusion, I propose (mostly) to refer to Marie-Claude Bunford as “Mother,” Dominic A. Bunford as “Son” or “Brother”, and Michaela A. Proost as “Daughter” or “Sister.”

6. The underlying proceedings included several corporate entities and trusts, which are unimportant for present purposes in the sense that the underlying beneficial interests all belong to some or all of Mother, Son and Daughter. For reasons that relate to the complex corporate structure set up decades ago by the late M. Bunford (father and/or husband of the surviving parties), this litigation occurred in Nova Scotia, notwithstanding that equally, if not more substantial connections to the underlying facts can be found in New Brunswick, Belgium, Monaco and France. This multi-jurisdictional scenario contributed to the complexity of the matters in litigation.

7. Earlier in his decision, in considering the request for solicitor and client costs, Justice Moir reviewed the law on solicitor-client costs - specifically, when they are appropriately awarded - and made the following statement:

> [74] .... I am satisfied that some of Mr. Bunford’s [brother] allegations against Ms. Molhant Proost [sister] were reprehensible. I find that he abused the processes of this court in numerous ways and his abuses are reprehensible. Primarily because of the abuses of process, I say that Mr. Bunford crossed the line into rare and exceptional circumstances that justify his being ordered to **fully indemnify** [his mother] Mde. Bunford and [his sister] Ms. Molhant Proost for their legal expenses. [emphasis added]

8. I mention this because his words “fully indemnify” may bring into play principles that are rarely considered in our courts. The vast majority of reported cases assessing “solicitor and client costs” are, in fact, disputes over a bill between a solicitor and his or her client. What is at issue here is different and might better be characterized as “party and party costs on a full indemnity basis,” similarly to what is done in Ontario.[1] The particular wording highlights an important difference between full indemnity costs and solicitor-client costs. Where a solicitor is taxing a bill against his or her client, the court ultimately decides what the solicitor is entitled to be paid. If the client has overpaid, the solicitor must refund the difference.

9. Where, as here, the intention is to fully indemnify a party for legal expenses incurred, and if the bill is reduced by the court, it is the client and not the solicitor that suffers. By way of illustration, if the client (Sister) has paid her lawyer $100.00, and I tax the bill to be paid by the opposing party (Brother) at $80.00, the $20.00 difference is borne by the client, not the lawyer. My order would not legally oblige the lawyer to refund $20.00 to the client.

10. Other adjudicators or taxing authorities have appreciated this distinction between taxations between the lawyer and client, as opposed to the party-party scenario, which are slightly different things. Adjudicator Richardson

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[1]The types of costs awarded in Ontario are referred to as partial indemnity, substantial indemnity and full indemnity, the latter of which is rare and is only referred to tangentially in rule 57.01(4)(d) which provides that “[n]othing in this rule or rules 57.02 to 57.07 [dealing with partial and substantial indemnity costs] affects the authority of the court under section 131 of the *Courts of Justice Act* .... to award costs in an amount that represents full indemnity.”

in *Campbell v. Smith's Field Manor Development Ltd., 2001 NSSM 7* wrote the following in 2001:

[30] The intent of an award of solicitor and client costs against a party is to provide the successful party with "complete indemnification for all costs (fees and disbursements) reasonably incurred in the course of prosecuting or defending the action or proceeding, but is not, in the absence of a special order, to include the costs of extra services judged not to be reasonably necessary:" *Apotex Inc v. Egis Pharmaceuticals* (1991) 1991 CanLII 2729 (ON SC), 4 OR (3d) 321 (GD), per Henry, J at p.325; Van Bork v. Van Bork [1994] OJ No. 3408 (GD) at ¶ 5-6.

[31] In other words, a person who has the benefit of such an order is to receive from the party against whom the order is made "payment for all costs relating to the litigation that ... [the former's] solicitor could properly ... [have asked him or her] to pay:" *Mintz v. Mintz* (1983) 1983 CanLII 1870 (ON SC), 43 OR (2d) 789 (HCJ), per Trainor, J.

[32] A taxing officer is obligated to tax a solicitor and client costs [] award as though his or her client were the one resisting the bill: *Harwood v. Harwood* [1998] AJ No. 217 (Taxing Officer); aff'd [1998] AJ No. 296 (QB). In other words, the defendants here are entitled to raise any objection that the client could raise to the "reasonableness" of the charges on a taxation.

[33] There are of course certain distinctions between a client who undergoes a solicitor and client taxation, and a party who has been ordered to pay another party's solicitor and client costs. One such distinction occurs with respect to charges in respect of unreasonable steps that a client insisted be taken. In such a case, the resulting charges might be "reasonable" if the client was the one expected to pay; but not if the other party were expected to pay: *Magee v. Trustees RCSS Ottawa* (1962) 32 DLR (2d) 162 (Ont HC) per McRuer, CJHC at pp.165-66. Similarly, a party charged with another's solicitor and client costs cannot be expected to pay in respect of costs and disbursements incurred before the action in which the order is made is commenced: see Gordon's Law of Costs (1884) at pp.187-88, cited in Magee, ibid., at p.163.

[34] In other words, a person who has the benefit of such an order is to receive from the party against whom the order is made "payment for all costs relating to the litigation that ... [the former's] solicitor could properly ... [have asked him or her] to pay:" *Mintz v. Mintz* (1983) 1983 CanLII 1870 (ON SC), 43 OR (2d) 789 (HCJ), per Trainor, J.

11. While the distinction may be a subtle one in most cases, the additional question (apart from the usual questions) that I propose to ask myself, when taxing the bill, is this:

> Given Justice Moir's stated intention to see her fully indemnified for her legal expense, is there some principled and just reason why Sister should not be fully indemnified by her Brother for what she has willingly paid (with no expectation of recovery from another litigant) in connection with the particular item under scrutiny?

Background to Dispute

12. There is no reason to spend too much time in this decision describing the dispute, or detailing the many procedural steps taken during this intense, multi-faceted piece of litigation. Justice Moir has already done that, and concluded in no uncertain terms that the conduct of Son/Brother was reprehensible and an abuse of the court's process, such that he should pay costs on the highest scale available - full indemnity.

13. For purposes of the narrative, it is sufficient to state that Son/Brother took exception to an effort by his Mother to transfer her 1/3 interest in a valuable family estate to his Sister, who would thereby become the 2/3 majority owner. He regarded such treatment as unfair and advanced a number of legal bases to challenge it, including lack of mental capacity and undue influence. I am told that, despite the Nova Scotia litigation having ended, there are still proceedings in Europe where these and other arguments are being made. Justice Moir, who presided over the Nova Scotia proceedings until they were abruptly ended, never got to the point

of considering the merits of these claims but rather took great umbrage to Brother's use (or abuse) of the Nova Scotia court process. His costs order reflects the scope of that umbrage. He found that this was one of those rare cases that called for severe denunciation of the party's conduct, through the mechanism of solicitor and client costs.

14. Justice Moir reviewed the law as to when full indemnity costs might be ordered. It is useful to quote those paragraphs:

> **Principles of Solicitor and Client Costs**
>
> [66] The discretion to order a full indemnity, and the extraordinary circumstances required to exercise the discretion, are recognized in Rule 77 – Costs. The scope provision includes "solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation": Rule 77.01(1)(b). Thus, full indemnity is exceptional to partial but substantial indemnity through party and party costs.
>
> [67] What circumstances give rise to the exception? This question is left to jurisprudence by Rule 77.03(2): "A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law."
>
> [68] Mr. Bunford's counsel referred me to *Armoyan v. Armoyan*, 2013 NSCA 136 (CanLII), which reaffirmed, at para. 11, that there has to be "litigation misconduct … that would support an award of solicitor and client costs." The required circumstances are described not only as "exceptional", but as "rare". Counsel also surveyed Nova Scotia cases in which a full indemnity has been allowed or refused, and compared the circumstances in those cases with those in this one.
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> [69] Justice Hood reviewed authorities on solicitor and client costs at paras. 479 to 486 of *Smith's Field Manor Development Ltd. v. Campbell*, 2001 NSSC 44 (CanLII). The award is aimed at "reprehensible, scandalous or outrageous conduct". See the discussion at paras. 479 to 481.

> [70] The reprehensible behavior may be in the making of allegations, the conduct of one's case or defence, or both. Reprehensible allegations of fraud, perjury, breach of fiduciary duty, and other kinds of dishonesty may lead to a full indemnity (paras. 484 to 486). Reprehensible conduct of one's case or defence may consist in "high-handed and unilateral actions" (para. 491). Abuse of process is now expressly recognized as a ground for a full indemnity: Rule 88.02(1)(d).
>
> [71] An abuse of process is "reprehensible" when it is "deserving of censure or rebuke" (paras. 482 and 483). However, reprehensible allegations or abuses of process do not always justify a full indemnity: *Brown v. Metropolitan Authority*, [1996] N.S.J. 146 (C.A.) at paras. 94 to 98.
>
> [72] When does a reprehensible allegation or abuse of process justify a full indemnity? I think the discussion at paras. 94 to 98 of Brown tells us that there is no simple demarcation.
>
> [73] Justice Pugsley recognized the discretion at para. 94. At para. 95 he noted, "This court has refused to award costs as between solicitor and client even though the conduct of the party in question has been found to be reprehensible." The Metropolitan Authority's conduct was "reprehensible" in the sense of "deserving censure or rebuke": paras. 96 and 97. Yet, Justice Pugsley concluded, at para. 98:
>
> > There is, however, a difference between reprehensible conduct as demonstrated here, and those rare and exceptional circumstances which attract the sanction of costs as between solicitor and client. In my opinion, the Authority's actions do not cross that line, and accordingly, I would not award costs as between solicitor and client.

15. These principles are important, insofar as they provide a measure of the serious disapproval of Mr. Bunford's conduct in the litigation, which led to Justice Moir's order that his Sister (and Mother) be "fully indemnified" for the expense of having to pay lawyers to represent her. As found, Mr. Bunford's conduct was more than merely reprehensible; it was a serious affront and an abuse of the court's process.

16. I propose not to lose sight of this finding, as I consider the body of law which may be better described as “Taxation Principles in cases of Solicitor Client Costs.”

Taxation Principles in cases of Solicitor Client Costs

17. The parties have referred to several cases and other authorities in their submissions. They are, in no particular order of importance:

a. *Mor-Town Developments Ltd. v. MacDonald* 2012 NSCA 35
b. *Re Toulany* (1989) 90 N.S.R. (2d) 256 (S.C.)
c. *J.T. v. Planetta* 2010 NSSM 52
d. *Jovcic v. Garson, Knox & MacDonald* [2005] N.S.J. No. 368
e. *Campbell v. Smith’s Field Manor Development Ltd.* 2001 NSSM 7
f. *Singleton & Associates v. Matheson* 2005 NSSM 4
g. *Lindsay v. Stewart McKean & Covert* [1998] N.S.J. No. 9
h. *Boyne Clarke LLP v. Adema* 2016 NSSM 1

18. I was also referred to the Nova Scotia Barristers Society Code of Professional Conduct (which reinforces the view that a solicitor must only charge “fair and reasonable” fees), as well as a 2006 article by W. Augustus Richardson, QC, entitled “*A Running Commentary on the Taxation of Legal Accounts in the Small Claims Court of Nova Scotia.*”

19. Also cited is Nova Scotia Civil Procedure Rule 77.13, which also captures many of the applicable principles.

20. From these cases, rules and texts there can be distilled a set of very well-known principles, which (as mentioned) mostly derive from issues between a solicitor and the actual client:

a. A lawyer's fees must be fair and reasonable.

b. The fairness and reasonableness must be assessed in light of all of the relevant circumstances, including (as set out in rule 77.13):

i. counsel's efforts to secure speed and avoid expense for the client;

ii. the nature, importance, and urgency of the case;

iii. the circumstances of the person who is to pay counsel, or of the fund out of which counsel is to be paid;

iv. the general conduct and expense of the proceeding;

v. the skill, labour, and responsibility involved;

vi. counsel's terms of retention, including an authorized contingency agreement, terms for payment by hourly rate, and terms for value billing.

c. The taxation may disallow fees charged for proceedings taken that were <u>unnecessary</u> (such as by overcaution or merely error);

d. Fees may be disallowed if, objectively speaking, too much time was spent on any particular step, or overall, which reflects poorly on the lawyer's skill;

e. The results achieved may be considered, but in some instances may be totally irrelevant;

f. The client's ability to pay <u>may</u> be relevant;

g. The client's expectations may carry some weight, for example where the lawyer's fees significantly exceed an estimate given;

h. The degree of skill demonstrated may, in some cases, be important, though the lawyer may not have had to exercise all of his or her skills to achieve the result;

21. It is with these principles in mind that I approach the bills in issue.

The amount sought

22. The total bill as presented initially was just above $460,000.00, comprising some 18 accounts to the client. This on its face may seem like an extraordinary amount of money. Justice Moir knew the order of magnitude of Sister's legal expenses when he ordered that she be fully indemnified. Had he been shocked or offended by these amounts, I would have expected some comment from him, or a different disposition of the costs issue. Instead, he wrote:

> [61] **Interlocutory and Preparatory Expenses**. Despite the fact that Mr. Bunford did not prosecute his claims in Nova Scotia to anything approaching maturity, his defence of the Molhant Proost proceeding and prosecution of his own proceedings caused numerous interlocutory disputes and much unnecessary work. Ms. Molhant Proost spent in excess of $400,000. Mde. Bunford, $80,000. In the end, Ms. Molhant Proost obtained the determination she needed without having received disclosure as ordered, discovery as scheduled, or Mr. Bunford's evidence.

23. Nowhere in his decision did he suggest that these expenses were disproportionate to what was accomplished in the litigation, and he was uniquely situated to appreciate the scope of what work was being done by counsel.

24. To be blunt, I believe it is fair to say that this dispute concerns very wealthy people arguing with close family members over the beneficial entitlement to an extraordinarily valuable piece of real property. The so-called Domaine in the south of France has been valued in the tens of millions of Euros. Each of Brother and Sister stands to lose or gain, respectively, up to one third of that value - depending upon the ultimate result. With such a large amount of money at stake, compounded by the emotionally charged inter-familial nature of the dispute, it should hardly surprise anyone that each of the parties would retain senior partners in large, reputable firms, and supply them with instructions to pursue or defend the proceedings, as the case may be, with vigour and using all of the resources that could properly be brought to bear. As one of the principal combatants, Sister had to have not only known, but intended, that Cox & Palmer would spare no expense in pursuing her financial interests.

25. Of course, she would have expected to be consulted about what was being done, and would have expected to be treated fairly by her lawyers. There is not a shred of evidence that the lawyers exceeded their instructions or sought to take unfair advantage of their client.

26. I conclude that, understood in its full and proper context, the fees and disbursements charged to Sister were proportionate to what was at stake. It would be improper, under these unique circumstances, to approach the lawyers' work with petty complaints that they took a bit too much time on a particular step or pursued an issue a bit too vigorously.

27. Mr. Chiasson on behalf of Brother, his client, has made a number of objections to the bills which would (if accepted) cause them to be reduced by 30 to 50%.

28. Mr. Keith at the hearing, reiterated in his written submissions, has identified a small amount of charges which ought not to be included in the taxed bill, because the underlying services relate to issues which were not directly part of the litigation. The amount that he conceded ought to be carved off is about $10,000.00, leaving a claimed amount of $450,284.52.

The privilege issue

29. One issue that created significant delay, and which occupied a great deal of attention and argument in the months prior to the taxation hearing, and at the hearing itself, was that of privileged information being potentially disclosed. To put it in simple terms, the original bills sent by Mr. Keith to his own client made reference to steps that he was taking, or people that he was contacting, which information was intended for her eyes only. Had Mr. Keith anticipated that he would at some point be showing these bills to his client's Brother, and had he anticipated that the dispute would still be active in another jurisdiction, he might have been more careful to couch the bills in more neutral terms. Indeed, there is a great deal of variation in the ways lawyers prepare their bills. There is no one right way to do it, so long as there is a sufficient basis to know what services are being referred to. I note that in the companion case between Mother and Son, the bills prepared by Mr. Mahody contained no confidential information that required redacting.

30. Efforts by Mr. Keith and his staff to redact the invoices to avoid providing Brother with information that he is not entitled to have, and which might be used against the interest of their client, were only partly successful. In the end, the accounts which Mr. Chiasson was given contained some blanked out portions. This ought to have given Mr. Chiasson a sufficient basis to satisfy himself that the services in question related to the subject litigation, but he retained a high level of suspicion.

31. The fact that the bills had to be redacted to protect Sister's interest in other litigation should not, and will not, prejudice her right to the full indemnity that Justice Moir intended she should have. As I have observed, Mr. Keith and his firm could well have prepared their bills a little differently and this issue would never have arisen.

The basic objections

32. The following are the essential issues raised by Mr. Chiasson:

    a. Too many lawyers and paralegals worked on the file, with the result that there may have been duplication of effort.

    b. The retainer letter did not suggest that so many different people would work on the file.

    c. Hourly rates were raised without the specific approval of the client.

    d. Copying charges were too high.

e. The bills show excessive preparation and duplication of effort.

f. There was work done that did not relate to the Nova Scotia litigation, which (while properly chargeable to the client) ought not to be considered costs of the Nova Scotia litigation.

33. I will comment on each of these in turn.

Too many lawyers and paralegals worked on the file

34. It is true that a lot of hands touched the file. One of the reasons to hire a large firm is to have available the resources of that firm, including specialists in areas other than litigation (such as Robert Arkin, who is a business/tax specialist), and juniors or other litigators who can help when necessary and perform tasks that need not be performed by the senior partner in charge of the file, charging at the rate of such senior lawyer. It is not only customary, but good practice for litigators to delegate tasks to paralegals, students and juniors, for both the sake of expediency and economy.

35. While I have no specific information before me as to how many lawyers worked on Brother's file, I note that he was (at the time) represented by Stewart McKelvey - which is probably the largest firm in Atlantic Canada, and which very likely used a similar approach of having a team of lawyers working on the file.

36. Absent any specific instance of duplication of effort, or excessive time being spent by a junior or paralegal to bring him or herself up to speed, I find no merit in this objection.

The retainer letter did not suggest that so many different people would work on the file.

37. A retainer letter is not expected to capture every aspect of a legal retainer. One of the reasons is that it is not necessarily predictable at the outset how long the retainer will last, or what direction it might take. There is nothing in any retainer letter here that limits the firm to using any particular small cadre of lawyers. I can infer that Sister knew she was retaining a large, full-service firm, and that she would have expected the available resources to be used for her benefit, when appropriate.

38. In fact, the Retainer Letter here stated:

> The work required to fulfill your requirements may be performed by the principal lawyer or other lawyers and legal assistants in the firm. Delegation by the principal lawyer may be for the purpose of involving lawyers or legal assistants with special expertise or skill in a particular area or to promote efficiency and cost effectiveness in handling your work.

39. There is no evidence that Sister ever complained about, or even commented on the number of lawyers and paralegals working on her file. Given that she is entitled to full indemnity costs, and given the wording of the Retainer Agreement, why should Brother be entitled to make that (at best very technical) complaint?

40. Even so, as demonstrated by Mr. Keith in his submissions, the vast bulk of the work was done by himself and a small core of people. Only a very small amount was done by a larger group to whom specific tasks were assigned.

Hourly rates were raised without the specific approval of the client

41. There is nothing that would require the specific approval of the client, given the following language of the Retainer Agreement:

> Hourly rates for our lawyers and paralegals vary depending upon their experience and the nature and complexity of the matter or issues involved. The hourly rates of our professionals are reviewed and adjusted from time to time to reflect current levels of legal experience and other factors. Adjustments to our hourly rates normally occur at the beginning of each calendar year. It is not our practice to advise our clients of updated or revised hourly rates unless we are specifically requested to do so.

42. I find no merit in this objection.

Copying charges were too high

43. I note with respect to disbursements that photocopying and other charges are not as low as they would be had the firm been adhering to the new guidelines adopted by the Supreme Court of Nova Scotia in its new Practice Memorandum #10 respecting Taxable Disbursements Under Rule 77.10(1), promulgated on June 24, 2016. I do not propose to apply this retroactively, but the entire profession is on notice that there are now severe limits on taxable amounts that can be passed on to clients and opposing parties for things like copies, faxes and other common charges.

44. Even so, in the past and long before this Practice Memorandum, I have been critical of some lawyers and firms for their copying and other charges. A charge for sending faxes or scans, where there is no direct cost (e.g. for paper or toner) should more properly be part of overhead. And while the cost of commercial copies has steadily decreased over the decades, the practice of law firms to charge 25 cents or more per copy has remained as a vestige of the time when expensive equipment may have justified such a charge.

45. In *Cunning v. Doucet*, 2009 NSSM 35, I wrote extensively on the subject of photocopies and faxes. I will not clutter up this decision with lengthy quotes from that case, but suffice it to say that I did not accept then (nor now) the charging of 25 cents for photocopies or printing. In *Cunning*, I reduced the copies to 15 cents, and also cut back on fax charges.

46. Mr. Keith argues that 25 cents is reasonable in all of the circumstances. I must differ with him, on that point.

47. Given that approximately $6,000.00 of the bills here are for copying and printing, I will grant a reduction of $2,000.00. I do not propose to interfere with all of the other disbursements, which have not been shown to be unreasonable in any respect.

The bills show excessive preparation and duplication of effort

48. I believe I have already answered this complaint. I do not see excessive preparation or duplication. I believe that Mr. Keith and his team took their

task very seriously and left no stone unturned, in their effort to fulfill their instructions and achieve the result in the client's favour. A complaint of excessive preparation or duplication is what one would colloquially refer to as "milking" a file. I get not the slightest whiff of milking in the way this file was handled.

Work done not relating to the Nova Scotia litigation

49. Mr. Chiasson argues that the bills disclose work done which (while properly chargeable to the client) ought not to be considered costs of the Nova Scotia litigation. In particular, he refers to:

a. Contacts that Mr. Keith had with a legal firm in France, CMS Bureau Francis Lefebvre ("CMS")
b. Contacts with a McInnes Cooper lawyer who was representing some of the companies
c. Work in relation to the MCB Beaufort trust and will
d. Work on tax issues
e. Consultations with experts in French and Belgian law
f. Issues involving school fees for Sister's children in Belgium
g. Work on legal issues that had already been withdrawn by Brother.

50. The total reduction that Mr. Chiasson seeks in relation to these matters is approximately $30,000.00.

Contacts that Mr. Keith had with CMS

51. As I understand it, CMS had been lawyers for Brother in Europe, and there was an effort by Mr. Keith to obtain relevant documents for use in the Nova Scotia litigation. Mr. Chiasson argues that CMS breached professional ethics in dealing with Mr. Keith; however, I have no evidence before me that would establish that. I also understand that there may be professional or even quasi-criminal proceedings taking place in France, but that is yet to be resolved.

52. Regardless of any ethical breaches by CMS, I am satisfied that Mr. Keith was legitimately pursuing objectives in the Nova Scotia litigation, and that the charges for this work should be covered under the costs order.

Costs for dealing with McInnes Cooper

53. Similarly, the cost of dealing with McInnes Cooper lawyers was also part of the subject litigation. The companies were parties to the litigation and, while their costs had to be absorbed by Sister and were not part of the order for indemnity, I do not read Justice Moir's order as excusing Brother from paying the costs of Mr. Keith (on behalf of his client) dealing with those counsel.

Work in relation to the MCB Beaufort trust and will

54. I am satisfied that the subject litigation had broad implications and that Mr. Keith was necessarily following up on the issues as he understood them. It

is difficult to draw bright lines around the issues in the litigation, as all of the implications in Nova Scotia and abroad had to be considered.

Work on tax issues

55. It was clearly necessary to have tax advice given all of the transactions and people and companies involved. This falls generally within the subject litigation.

Consultations with experts in French and Belgian law

56. Mr. Keith appreciated that foreign law might apply to some or all of the issues in the litigation. It was necessary for him to have expert advice on such law. I see no merit in this objection.

Issues involving school fees for Sister's children in Belgium

57. According to Mr. Keith in his submissions, *"Mr. Bunford unilaterally attempted to contact the private school in London, England where Ms. Molhant Proost's children are enrolled. He did so on the auspices that he was, in fact, paying for their tuition and that this was somehow related to debts owing by Ms. Molhant Proost and, more broadly, Ms. Molhant Proost's inability to manage her financial affairs. All of this was obviously relevant to the ongoing litigation where Ms. Molhant Proost was being constantly attacked and, as well, Mr. Bunford was claiming as a creditor of Ms. Molhant Proost."*

58. The charges associated with this were $2,275.00.

59. Again, I will allow this amount on the basis that the Nova Scotia litigation appeared to have implications and side-issues in multiple jurisdictions. There is no evidence from Mr. Chiasson or his client that would contradict Mr. Keith's explanation.

Work on legal issues that had already been withdrawn by Brother

60. The objection here is that Mr. Keith appeared to be researching issues that were no longer in play. Mr. Keith's answer is that Brother did not withdraw all of the allegations against Sister until very late in the Nova Scotia proceeding, which is clearly true. Mr. Keith was already concerned about new proceedings that Brother was proposing to take in other jurisdictions. Brother had already shown a penchant for withdrawing and re-instituting proceedings, and Mr. Keith wanted to be fully prepared. The amount involved here is small - about $1,200.00 - in the grand scheme of things.

61. This charge might be seen as slightly overcautious on Mr. Keith's part, but I believe he can be excused a certain amount of overcaution, given the conduct of Brother that had been sufficiently egregious to attract the degree of censure that it did from Justice Moir. I am not prepared to disallow these amounts.

CONCLUSION

62. In the result, I am reducing the bill from $450,284.52 - which is the amended claim - to $448,284.52. This is inclusive of fees, disbursements and HST.

63. I may be spoken to as to the costs of the taxation proceeding, and will defer issuing the certificate of taxation until costs have been addressed.

Eric K. Slone, Adjudicator