

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Blois, Nickerson & Bryson LLP v. Manuge*, 2022 NSSM 47

Claim No. SCCH 514371

Between:

Blois, Nickerson & Bryson LLP

Applicant

-and-

Marianne Manuge & The Estate of Elizabeth S. Manuge

Respondent

DECISION AND ORDER

1. This is a taxation of the applicant law firm's legal account for services provided by Justin Adams for the Respondent, Marianne Manuge.
2. The matter was heard on December 20, 2022. In keeping with this being a taxation of a legal account by a lawyer for a client in which the lawyer owes a fiduciary duty to the client, I modified the procedures to account for that fact. I heard the position of each party, allowed them to outline the facts as they recalled them and to engage with each other in a non-adversarial way. Thus, the matter proceeded without the formalities of a trial.
3. The Applicant submitted a 467 page book of documents. Mr. Adams spoke about the relationship with the Respondent, Ms Manuge. She then told about the relationship and provided her perspective. Nothing was lost because the information was not provided to the Court under oath or affirmation.
4. This Court's authority to assess legal accounts is found in s. 9A of the Small Claims Court Act:

9A (1) An adjudicator has all the powers that were exercised by taxing masters appointed pursuant to the Taxing Masters Act immediately before the repeal of that Act, and may carry out any taxations of fees, costs, charges or disbursements that a taxing master had jurisdiction to perform pursuant to any enactment or rule.

5. The Legal Profession Act is also relevant to this court's role. The provisions of ss. 65 – 70 of the Legal Profession Act are appended to these reasons.
6. In most taxations, the 'reasonableness' of the fees is the issue. That is not the case here, as the account of the Applicant reflects about 1/3 of the value of the time expended by Mr. Adams. Given the results, as I relate later there is no doubt the account was reasonable.
7. The issue in this case is whether the Applicant agreed to act for the Respondent on a *pro bono* basis, or whether fees were to be charged. At the conclusion of the hearing, I found there was a retainer between Mr. Adams and Ms Manuge that provided the applicant would represent to respondent, and that a reasonable account would be rendered at the end of the matter.
8. These are my reasons for that conclusion.

The Evidence

9. The Respondent was one of two children of the late Robert and Elizabeth Manuge who, at the time of their deaths resided in Yarmouth County. Mr. Manuge pre-deceased his wife. She died in 2018. Her estate became the subject of a dispute between her children. Timothy Manuge sued his sister, Marianne, the Respondent in this matter, in the Supreme Court of Nova Scotia and he also filed a claim in the Court of Probate
10. The gist of the claim by Timothy was an allegation the Respondent exercised undue influence over her mother when in 2016 a deed to Elizabeth Manuge's property was conveyed to Elizabeth and Marianne Manuge as joint tenants. Mt. Manuge's claim sought a declaration that this property was part of estate of the deceased, rather than belonging to the Respondent as the survivor of a joint tenancy.
11. The simultaneous proceeding in the Court of Probate of Nova Scotia alleged undue influence by the Respondent over Elizabeth Manuge in the execution of a will in 2015, which resulted in Timothy Manuge being excluded as a beneficiary of his mother's estate in favour of the estate passing to Marianne Manuge.

12. In December 2019, on the advice of a lawyer in Yarmouth, the Respondent, having been served with the Statement of Claim, contacted Bruce Outhouse KC, a senior lawyer at the Applicant firm regarding the action. Ms Manuge advised the Court she spoke to two other lawyers at about the same time as she was 'shopping' for a lawyer.

13. On December 16, 2019, Mr. Outhouse indicated he would not act in this matter, but he would refer it to his partner, Justin Adams.

14. On December 20, Mr. Adams, following the referral from Mr. Outhouse and without having spoken to the Respondent, emailed her, indicating he had spoken to Timothy Manuge's lawyer and discussed some initial matters. He stated:

I will aim to send you a retainer agreement Monday and we will discuss the substance of the response in the New Year.

15. On January 2, 2022, the Respondent wrote to Mr. Adams, indicating she had heard nothing since December 20 and asking to be contacted immediately.

16. Mr. Adams replied he was away, would send a retainer agreement for review and that he had spoken to Mr. Manuge's lawyer. He assured the Respondent, as a result of his discussions with that lawyer, there was no risk of a default being filed but if she preferred, he could put forward a *pro forma* response to the proceeding.

17. On January 6, 2020, Mr. Adams emailed the Respondent:

Further to our exchange of emails last week, I attach the draft retainer agreement for your review. If you wish to proceed to complete the retainer of our firm, with respect to financial arrangements, I would ask that you select one of the two options set out on pages 4 and 5.

As indicated below, I am proceeding to draft a defence to the notice of action.

18. The next afternoon (January 7), the Respondent wrote to Mr. Adams:

I feel very confused by all this. I don't understand the direction this is going..... Your retainer letter has left me feeling overwhelmed, I would need to have another conversation with you before proceeding.

19. Mr. Adams immediately¹ replied, indicating he was available to speak now. There apparently was a call but there was a poor connection, so an email was indicated.
20. That email was sent later that day. It included a draft defence. Mr. Adams said it was incomplete and would be amended with feedback from Ms. Manuge.
21. At the same time, Mr. Adams confirmed he was retained and that no default action would be taken by Mr. Manuge, whose counsel confirmed that. On January 9, the email exchange with Mr. Manuge's lawyer was shared with the Respondent.
22. Over the next week preparation of pleadings continued with extensive input from the Respondent.
23. Though the draft retainer letter had been sent to the Respondent it was not signed.
24. Mr. Adams spoke of his conversations with the Respondent about fees, which he says he initiated.
25. In response to Ms. Manuge's position that he agreed to undertake the file on a pro bono basis he stated that Ms. Manuge was a stranger to him and this was a file to be charged. He says he told the Respondent 'I'll be as reasonable as I can be.' His intention was not to interim bill the file, but rather to bill the account at the end of the matter based on the work done and the value to the client.
26. Ms. Manuge asked Mr. Adams why he worked for so long without payment.
27. He replied he was aware the Respondent owned a condominium in Montreal and in Nova Scotia was growing blueberries commercially. He said he tries to be sensitive to a client's circumstances, which appeared to relate to a possible limitation on available cash. He says he and Mr. Outhouse are lawyers who make a living from the fees they charge and that 'you knew you were contracting' for services that would be paid for'.

¹ There is a time error on the emails as Mr. Adams email looks to have been sent before Ms Manuge's. Nothing turns on this.

28. In December 2019, Ms. Manuge wanted Bruce Outhouse involved until she was satisfied with Mr. Adams. She said when she contacted Mr. Adams during the 2019 holiday period he was upset and ‘yelled’ at her. In early January, she copied her communications to Mr. Outhouse, which Mr. Adams did not always do.
29. She said Mr. Adams was angry with her. She copied Mr. Outhouse because there was no agreement in place. In response to Mr. Adams alleged emotional reaction to her she said ‘Whoa – whoa – whoa! What’s going on here?’ In response she said Mr. Adams asked, ‘How about I take on your case *pro bono*?’ Her reply was: ‘If you mean you’d take my case for free, I’d be okay with that.’
30. The Respondent then says Mr. Adams indicated he’d not charge any fees until the case went to trial and if witnesses needed to be interviewed and affidavits prepared.
31. She said Mr. Adams was trying to be amenable because he had ‘yelled at me’.
32. At this point she felt comfortable with Mr. Adams. She said she would do the lion’s share of the work and no longer copied Mr. Outhouse.
33. The timeframe for these supposed exchanges was in early January 2020.
34. There is nothing that documents this arrangement.
35. Work was done on the file in 2020. Applications were made to the Supreme Court and later in the year a settlement offer was received from Mr. Manuge. In recommending acceptance of a settlement proposal, Mr. Adams, noted the pros and cons of a pre-trial resolution and stated:
- If you continue, I assure you that you would spend far more on legal fees than that value of the items Tim has requested to vindicate your position. Right now my legal fees are going to be very reasonable because I have not started interviewing witnesses and preparing affidavits. That could easily be a 10-20 k exercise.
36. The dispute between the siblings was resolved on terms favourable to Ms. Manuge as the real estate transaction and the will which were subject to the claims were not disturbed. The account was rendered. The value of the time

spent on the file to that point was about three times the fees the firm charged the Respondent.

Analysis

37. The starting point for assessing the relationship between the parties in this case revolves around the formation of the lawyer-client relationship. The Code of Professional Conduct² governing lawyers defines a client as:

“**client**” means a person who:

(i) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or

(ii) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf, and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work.

38. The Code, in the commentary, also states a legal conclusion that ‘A lawyer-client relationship may be established without formality.’

39. Therefore, a Court needs to look at the relationship between the parties to initially determine if a lawyer-client relationship, namely a retainer, was created.

40. In doing so in this case, one asks if a contract for legal services was consummated.

41. Ms. Manuge needed representation because of the claims against her. She contacted the Applicant firm to discuss representation. The firm, on her behalf, contacted her brother’s lawyer and preserved her rights by arranging that no default proceedings would occur.

42. At that time, Ms. Manuge had agreed that the Applicant would be her counsel. She was a client. The firm had agreed to render legal services on her behalf.

43. Though a draft written retainer was provided, it was not signed. It is trite to say, had it been executed this dispute would have been avoided. As the Code of Professional Conduct strongly urges:

A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and

² <https://nsbs.org/legal-profession/code-of-professional-conduct/>

disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined. (Rule 3.6-1, Commentary 3)

It is at a lawyer's peril that they fail to memorialize the fee arrangements in writing.

44. The initial communications between Ms. Manuge and Mr. Adams were via email. Though it has not been necessary to quote the extensive written communications between the parties about the file during 2020, it is clear there were extensive written exchanges about various issues relevant the matter. Discussions and advice were confirmed.
45. What is not in writing is anything that confirms a 'pro bono' arrangement or agreement to represent Ms. Manuge 'for free'.
46. Though Ms. Manuge asserts that was the arrangement, her own testimony undermines that conclusion as she acknowledged fees would be charged if the matter went to trial and witnesses needed to be interviewed and affidavits prepared. That legal work is the description used by Mr. Adams in his letter of advice to his client regarding settlement.
47. At that point he notes his fees to date will be 'reasonable'.
48. The arrangements between the parties were reached after the retainer agreement was sent and Ms. Manuge expressed her confusion about how that matter was proceeding. At that point, Mr. Adams confirmed his fees would be reasonable. There would be no interim billing as he recognized his client's circumstances. The Court finds that he appreciated there may be a shortage of cash for payment of legal fees which would be addressed best when the matter ended.
49. Mr. Adams did not agree to act for free. Ms. Manuge confused Mr. Adam's offer not to interim bill his account with an offer to work for free. That was neither his intention nor a reasonable conclusion from the offer regarding interim accounts.

50.I find the retainer arrangements between the Applicant and Ms. Manuge was to act on her behalf in the dispute with her brother. The fee arrangements contained in that agreement were to render a reasonable account at the end of the file, based on the work performed and the value to the client.

51.Based on the work done and the value to the client, who was relieved of liability for alleged wrongdoing in a real estate conveyance and a will preparation. the fees charges were reasonable.

52.The Client must pay:

- a. Outstanding fees: \$5907.55
- b. Costs – filing fee: \$99.70
- Service: \$719.76
- Courier fees: \$22.71

TOTAL: \$6749.72

53.If a Certificate of Judgment is required, Mr. Adams may prepare it and forward it to the Court Clerk for signature.

Dated at Halifax, Nova Scotia, December 28, 2022

Darrel Pink, Adjudicator

SCHEDULE A

PART VI

LEGAL FEES

Interpretation of Part

65. In this Part,

- (a) "account" means the fees, costs, charges and disbursement to be paid by a client or a party to a matter as a result of an order of a court;
- (b) "adjudicator" means an adjudicator of the Small Claims Court of Nova Scotia;
- (c) "lawyer" includes a law firm and a law corporation. 2004, c. 28, s. 65.

Account recoverable

66 A lawyer may sue to recover the lawyer's reasonable and lawful account. 2004, c. 28, s. 66. Taxation

67 Notwithstanding any other enactment, a lawyer's account may be taxed by

- (a) an adjudicator; or
- (b) a judge. 2004, c. 28, s. 67.

Initiation of taxation

68 A taxation may be initiated by

- (a) any person claiming the whole or a portion of an account; or
- (b) any person from whom an account or any portion of it is claimed. 2004, c. 28, s. 68.

Where lawyer is party

69 Where a lawyer is a party in a proceeding in which the reasonableness of the lawyer's account is raised, the presiding judge or adjudicator may

(a) tax the account as part of the proceeding; or

(b) order the account to be taxed by another judge or adjudicator. 2004, c. 28, s. 69.

Appeal

70 A decision on a taxation may be appealed to (a) the Supreme Court of Nova Scotia, if the taxation is conducted by an adjudicator; or

(b) the Nova Scotia Court of Appeal, if the taxation is conducted by a judge. 2004, c. 28, s. 70.