SC CIV 94 014

CV 05049

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DONALD M. COOPER, Q.C., RICHARD J. PEACH, EDWARD W. GULLBERG, GEOFFREY P. WIEST, and SHEILA M. MACPHERSON, carrying on business under the firm name and style of COOPER, PEACH AND GULLBERG

Plaintiffs

- and -

WALTER ENGLAND

Defendant

Taxation of solicitor-client accounts.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife, N.W.T.
May 2, 1994

Judgment filed: May 30, 1994

Counsel for the Plaintiffs
(Solicitors): Geoffrey P. Wiest

Counsel for the Defendant
(Client): James D. Brydon

1838

CV 05049

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DONALD M. COOPER, Q.C., RICHARD J. PEACH, EDWARD W. GULLBERG, GEOFFREY P. WIEST, and SHEILA M. MACPHERSON, carrying on business under the firm name and style of COOPER, PEACH AND GULLBERG

Plaintiffs

- and -

WALTER ENGLAND

Defendant

REASONS FOR JUDGMENT

INTRODUCTION:

1 This is a taxation of accounts rendered by the firm of Cooper, Peach and Gullberg (the "solicitors") to Walter England (the "client"). This taxation is at the behest of the solicitors.

2 This proceeding is styled as it is in the style of cause because it started out as a civil action for fees. A Statement of Claim was filed by the solicitors on February 4, 1994, and a Statement of Defence was filed on February 14, 1994. The action was discontinued on April 26, 1994, and a Notice of Appointment for Taxation was taken out by the solicitors on April 27, 1994.

Ordinarily a taxation of a solicitor-client bill would be conducted by the clerk of the court as a "taxing officer" pursuant to the Rules of Court. Due to a situation of understaffing in the court registry, the taxation was conducted before me. The taxation was in the form of a formal hearing in chambers with evidence given under oath. In any taxation where there is a dispute the taxing officer (be it judge or clerk) is under a duty to hear evidence: Robertshaw v. Schuman (1980), 21 B.C.L.R. 314 (B.C.S.C.); Lindsay v. Stewart, MacKeen and Covert (1988) 47 D.L.R. (4th) 126 (N.S.C.A.).

At the hearing held on May 2, 1994, counsel for the solicitors produced computer print-outs of the firm's time dockets in support of most of the accounts submitted to the client. Counsel for the client was given an opportunity to review those dockets and, subsequently, further written submissions were filed by both parties. Counsel have indicated that they do not wish to reattend in chambers to make further oral submissions and I can make my decision on the basis of the previous hearing and the material now filed.

FACTS:

The solicitors represented the client in the defence of a very serious criminal matter. The retainer lasted from August, 1992, to December, 1993. The criminal

proceedings culminated in a trial held over two days in November, 1993, which resulted in an acquittal.

6 I should state at the outset of these reasons that, since I was the trial judge on the criminal case, I think I am at least as well qualified as anyone to pass judgment on the quality of representation the client received at trial. Regardless of the fact that there was an acquittal, there is no question in my mind that defence counsel at trial, Mr. Robert Gorin, did an excellent job in a difficult case. The fact that the Crown is now appealing the acquittal is more of a comment on what the Crown thinks of the judgment, not of what an objective informed observer should think of the quality of the defence.

7 Mr. Gorin, who testified at the hearing, said that the client had been a client of the firm for some time and was referred to him for the purposes of the criminal proceedings. Mr. Gorin explained to the client that the fees to be charged by the firm would be based on a straight time basis, that is to say, by multiplying the hourly rate for Mr. Gorin by the hours spent by him on the case. The terms of the retainer were not put in writing either in the form of a formal retainer agreement or a confirming letter from the solicitors to the client. Mr. Gorin said that it is his normal practice to send an engagement letter to a client but none was sent in this case.

8 Mr. Gorin testified that he told the client initially that his hourly rate was $135. This rate changed twice: in March, 1993, it was increased to $145 per hour; in September, 1993, it was increased to $155 per hour. Mr. Gorin was not sure if the client was told of the change and the solicitors could produce no evidence to suggest that he was informed.

9 During the course of the retainer, the solicitors sent 12 accounts to the client. By my calculations the total amount billed (inclusive of fees, disbursements and tax) was $30,421.87. Of this total the sum of $26,840.55 represented fees. All but the last two accounts, rendered on November 16 and December 3, 1993, in the amounts of $11,531.95 and $201.25 respectively, were paid by the client.

10 The firm demanded and received retainers from time to time which were held in trust and applied on accounts as they were billed. On October 14, 1993, approximately two weeks before the trial, Mr. Gorin sent a letter to the client demanding payment of his outstanding accounts (then totalling $5,000) and a further retainer of $2,000. The letter stated, in part, that "it is also firm policy to request an additional retainer before a trial date in an amount which is likely to cover fees incurred during the trial period". The account of November 16, 1993, which covered the period from September 23, 1993, and included the trial, charged a fee of $10,403. The time dockets for the trial itself, not including preparation, revealed a

total of 11.5 hours which, at $155 per hour, amounts to $1,782.50 as the fee for just the trial.

11 It is not disputed that the fees charged to the client were based on Mr. Gorin's hourly rate as it changed over the course of the retainer. There is also evidence indicating that other lawyers and articled clerks performed work on the file (either directly or by consultation with Mr. Gorin) and this too was charged to the client. There is as well evidence that the fees on some accounts were discounted. Mr. Gorin testified that the client, who was relatively elderly, required a lot of attention because of his obvious anxiety over the charge and that a lot of time was simply not recorded on the docket sheets.

12 Some of the other pertinent facts will be reviewed in the discussion of issues that follows.

ISSUES:

13 The client does not say that the solicitors were negligent. There is no evidence to justify such an assertion. The client says, however, that the total amount charged by the solicitors was excessive given the nature of the case, the skill required, and the time available to the solicitors to provide the necessary services. In particular the client raises the following issues:

(1) Whether all accounts, including the ones that have been paid, can be taken into account as part of this court's consideration of the reasonableness of the total fees charged?

(2) What requirements are imposed upon billing practices when solicitors charge by an hourly rate?

(3) What effect, if any, does the change in hourly rates have on the accounts?

(4) Do the accounts reveal work that was unnecessary or excessive?

(5) Should the client be charged fees for services or consultation provided by other members of the same firm?

(6) What effect, if any, does the letter of October 14, 1993, have on the terms of the retainer?

4 Before discussing these specific issues in the context of this particular case, I turn to a consideration of the general principles applicable to the taxation of solicitor-client accounts.

TAXATION OF SOLICITOR-CLIENT ACCOUNTS:

5 It is trite to say that if one engages a solicitor then one will be obliged to pay a reasonable fee according to criteria established by law. In this jurisdiction the

applicable law is found in Rules 551 and 552 of the Rules of Court:

> 551. Barristers and solicitors are entitled to such compensation as may appear reasonable to be paid by the client for the services performed, having regard to:
> (a) the nature, importance and urgency of the matters involved,
> (b) the circumstances and interest of the person by whom the costs are payable,
> (c) the fund out of which they are payable,
> (d) the general conduct and costs of the proceedings,
> (e) the skill, labour and responsibility involved, and
> (f) all other relevant circumstances, including, to the extent hereinafter authorized, the contingencies involved.
>
> 552. The charges of barristers and solicitors for services performed by them are, notwithstanding any agreement to the contrary, subject to taxation as provided by these Rules.

These rules have been called a codification of the common law regarding a solicitor's entitlement to reasonable compensation: Nissen v. Calgary (1983), 51 A.R. 252 (C.A.). Furthermore, these rules apply to all solicitors' accounts for any purpose. On a taxation it is immaterial whether the case is a criminal or a civil one: In re E., a Solicitor, [1927] 2 W.W.R. 1324 (Alta. C.A.).

16 Generally speaking legal fees are charged pursuant to agreement, either express or implied, depending on the circumstances. But whatever may be the agreement the underlying principle is that the client must be given a clear understanding as to how the charges are to be made. The relationship between solicitor and client is one of utmost good faith and therefore the solicitor has a duty to advise the client fully and

fairly concerning the terms of the retainer: Ladner Downs v. Crowley, [1987] 5 W.W.R. 322 (B.C.S.C.).

17 In many situations the fees for criminal cases are charged on a different basis than for civil cases. They are sometimes a lump sum. But, in all cases, the underlying requirement for a fully informed client remains the same:

> It is argued that it is not customary for detailed bills to be rendered in criminal cases, which is true. But that is all the more reason why the client should be kept informed as to probable cost. It is also submitted that fees in criminal cases, particularly those in which success has crowned the efforts of counsel, are higher than in civil, without very much regard to the amount of work and time involved. In many cases this is doubtless true but in many others not. But if more substantial fees are to be allowed over objection by the client, there must be an understanding between him and the solicitor beforehand.

Per Farthing J. in Re Konkin's Account, [1962] 40 W.W.R. 623 (Alta.S.C.) at page 624.

18 Where the solicitor and client have not bargained for a single sum for the performance of the entire contract for legal services, then the basis for consideration of a just and proper remuneration are the factors set out in Rule 551.

19 Even where, as here, it is undisputed that the basis of billing would be by the hour, the supervisory function of the court is still engaged on a taxation. This is

recognized by Rule 572 which specifically empowers a taxing officer to disallow costs that are excessive, improper, unnecessary, or taken through negligence or mistake.

20 Courts have often been critical of the straight time method of billing for legal services. It is said that time is only one factor and, frequently, the least important. An Ontario taxing officer put it as follows in Re Solicitors, [1971] 3 O.R. 470 (S.C.) at page 472:

> While performing these services the solicitors maintained careful dockets . . . . This is all very impressive, but the fee . . . charged by the solicitors suggests that one of the dangers of keeping detailed dockets is that one might become mesmerized by the ticking of the clock and come to value the expenditure of time to the exclusion of all other factors that should bear on the assessment of a reasonable fee for solicitors' services. It is not true that a solicitor has only time to sell and whoever was the author of that inanity has little to be proud of. Of course, he may have been referring to that hopefully small minority of solicitors who, indeed, have little to offer a client but their time. But a solicitor, a competent solicitor, has knowledge, advice, expertise and experience with which to embellish the passage of raw time. It is these factors that weigh more heavily when fees are being considered, rather than how much time was lavished on the client's affairs. Another important factor is the value of services of the solicitor, not to himself, but to his client. What did he accomplish for his client ---- if anything?

These comments were recently quoted with approval by Southin J.A. of the British Columbia Court of Appeal in Arctic Installations (Victoria) Ltd. v. Campney and Murphy (1994), 109 D.L.R. (4th) 609 (at page 616).

21 In my view the hourly method of billing is usually the most straight-forward and

simplest method of calculating a fee. As such it is a useful tool for those providing professional services and their clients. Its efficacy, however, is dependent on an accurate and careful analysis of how the hourly rate is calculated. The assumption of course is that if one pays a higher hourly rate (for presumably a more experienced or skillful practitioner) then the number of hours will be less than those for someone less experienced but with a lower hourly rate. Clients nowadays, however, have questioned the assumptions underlying the hourly method. They quite rightly demand results for their money, a type of "value-billing", that requires a far more careful assessment by the professional. To many clients the hourly method of billing is tantamount to giving the professional a blank cheque.

22 I think that the hourly method of billing will always be an important part of billing for services rendered. The time spent on any matter is always relevant and useful in calculating a proper level of remuneration. But I agree with those judgments where it has been said that when the hourly method results in a total that is out of proportion to the nature of the case then it is not satisfactory and should be reviewed: Wainoco Oil and Gas Ltd. v. Solick (1987), 49 Alta.L.R. (2d) 390 (Q.B.); MacDonald v. Chernetski (1987), 81 A.R. 142 (Q.B.).

TAKING PRIOR ACCOUNTS INTO CONSIDERATION:

23 Client's counsel properly refers my attention to Rule 584 which excludes taxation of bills of costs under certain conditions, specifically, among others, where a bill has been fully paid after six months of delivery of the bill. The rule does provide that a court may if warranted tax such bills notwithstanding the rule. Solicitors' counsel submits that it would be inappropriate to tax any accounts other than the last two unpaid ones.

24 There is considerable case law on this subject. In my view, there is a distinction between a "bill of costs" and periodic "accounts" for services rendered in an ongoing matter. A "bill of costs" refers to a bill for an entire contract. A series of accounts, as in this case, does not constitute one "bill". Payment of periodic accounts does not constitute a surrender of the client's right to tax. Reference may be made to Ladner Downs v. Thauberger, [1983] 5 W.W.R. 522 (B.C.S.C.); Ladner Downs v. Crowley (above); and Lindsay v. Stewart, MacKeen and Covert (above).

25 I have concluded that the previous accounts may be considered. They are clearly relevant to a consideration of whether the total amount charged for services rendered is fair and reasonable remuneration.

REQUIREMENTS WHEN BILLING HOURLY RATES:

26 In Re Toulany and McInnes, Cooper and Robertson (1989), 57 D.L.R. (4th) 649 (N.S.S.C.), Grant J. had this to say as to the requirements for a solicitor's bill:

> I consider the test of a solicitor's bill is that the charges are identified to the client so the bill can be intelligently appraised by the client and/or someone on his or her behalf to determine if they are fair and reasonable. The client has the added protection of taxation and the appeal from taxation.

27 There is a burden on a solicitor, when charging on the basis of time, to substantiate the charges by accurate records. A solicitor must establish as well that each hour of docketed time related to the issue and was necessary to properly prepare and present the client's case: Mintz v. Mintz (1983), 43 O.R. (2d) 789 (H.C.J.). And the overall number of hours may be examined by the court in relation to the nature of the whole matter: Re Kapoor, [1983] 4 W.W.R. 589 (Sask.Q.B.).

28 In this case 11 of the 12 accounts submitted to the client charged fees and disbursements. One account, the last one, was for disbursements only. The client has not raised a concern about any of the disbursements. They are substantiated by an affidavit of disbursements. So I concern myself only with the fees.

All accounts in which fees are charged have a descriptive narrative or

itemization of the services rendered. Only one account however, that of October 20, 1992, is itemized by time spent for each service and a specific calculation shown for number of hours times the applicable hourly rate. Two others state a total time but not the hourly rate. All of the others simply state a lump sum fee after a recital of the services. With most of these accounts, if one were to examine them in isolation, without knowing there were previous accounts, one could not even tell what time period was covered by the account.

30 Besides revealing a lack of consistency in the form of accounts, these accounts do not give adequate information to the client as to the time spent, by whom, and the hourly charges.

31 The evidence on behalf of the solicitors was that some of the fees were discounted and some of the time spent on this file was not recorded at all. It may be argued that these facts should be taken into account in upholding the reasonableness of the fees. I cannot agree.

32 The question of time spent but not recorded is obviously impossible to assess on a taxation. There is no supporting evidence.

33 The question of discounts may be relevant if one could make a determination

as to the reasons behind such discounts and the basis on which they are calculated. Again, in this case, one is simply unable to do that.

34 Two accounts on their face indicate a discount of fees. One dated November 19, 1992, shows a discount from $1,930.50 to $1,530.00; another dated January 27, 1993, shows a discount from $2,259.84 to $1,500.00. Unfortunately computer printouts or docket sheets were not provided for these accounts so there is no evidence as to why these accounts were discounted (and no information was provided to the client as to why).

35 Two other accounts, while not showing a discount on their face, have discounts built in when one examines the back-up computer records.

36 The account of July 27, 1993, shows a fee of $3,502.92, disbursements of $235.40, and tax of $261.68, for a total of $4,000.00. The computer time record, however, shows total fees of $4,669.50 (representing 30.60 hours for Mr. Gorin at $145 per hour and 3.1 hours for articled clerks at $75 per hour). The printout also has a handwritten notification beside the fee calculation of: "$4,000 including disbursements", initialled by, from what I gather from the evidence, one of the partners, Ms. MacPherson. There is, however, nothing in the itemized printout to suggest why this discount was made.

37 The account for September 23, 1993, charged a fee of $4,400.13 out of a total sum of $5,000.00. The computer printout has the handwritten notation, again initialled by Ms. MacPherson, to: "please write off $956.99 in fees." Again, no explanation is given as to this discount.

38 It is not for me to speculate on these matters in the absence of evidence. But, the lack of clear, consistent information to the client has an impact on the issue raised by the changes, during the course of the retainer, in Mr. Gorin's hourly rate.

CHANGES IN HOURLY RATE:

39 The evidence provided to me was that Mr. Gorin, at the beginning of the retainer, advised the client that his hourly rate was $135. This rate changed twice, first to $145 and then to $155, during his representation of the client. I am sure that any changes were because of firm policy, not the whim of Mr. Gorin. Client's counsel submits that the change in rates was a change of a fundamental term of the contract so that, in the absence of agreement, the fees charged at the higher rates must be disallowed.

40 It is worth noting that no issue was taken with the amount set as the hourly rate for Mr. Gorin. Had such an issue been raised I would have been compelled to

hear expert evidence as to the prevailing rates charged by the Yellowknife bar for people in Mr. Gorin's position. Fortunately that was not required in this case.

41 Solicitors' counsel says, in his written submissions, that (a) "there is no evidence that the Respondent (meaning the client) was not advised of the changes in rates"; (b) since the client was originally represented by the firm, specifically Ms. MacPherson, on another matter, he (that is to say the client) "cannot say that he is not familiar with the billing practices of the firm"; and (c) the client paid accounts after the rate changed.

42 The fact that the client paid the accounts is irrelevant. In this case I have already found the accounts, with one exception, to be devoid of the information necessary for the client to be fully informed of how he was being charged.

43 With respect to the client's knowledge of the firm's billing practices, there is simply no evidence before me on this point. The client, according to Mr. Gorin's evidence, was informed that he would be charged by the hour at the rate of $135 per hour. Mr. Gorin was not sure if the client was told of the changes and, of course, there was nothing in writing setting out the retainer arrangements.

44 The major question is whether counsel is correct when he in effect suggests

I should uphold the billing rates because there is no evidence that the client was not advised of the changes. It seems to me that counsel has misconstrued where the burden of proof lies.

45 In disputes over solicitor's accounts, the courts have always placed the onus on the solicitor to justify the account. Any doubt or ambiguity is always resolved in favour of the client. Lord Denning, in Griffiths v. Evans, [1953] 2 All E.R. 1364 (C.A.) said (at page 1369):

> On this question of retainer, I would observe that where there is a difference between a solicitor and his client on it, the courts have said for the last hundred years or more that the word of the client is to be preferred to the word of the solicitor, or, at any rate, more weight is to be given to it: see *Crossley v. Crowther* (7), per SIR GEORGE J. TURNER, V.-C.: *Re Paine* (9) per WARRINGTON, J. The reason is plain. It is because the client is ignorant and the solicitor is, or should be, learned. If the solicitor does not take the precaution of getting a written retainer, he has only himself to thank for being at variance with his client over it and must take the consequences.

See also Re Paolini and Evans, Keenan (1976), 13 O.R. (2d) 767 (H.C.J.); Gokavi v. Lojek, Jones and Co., [1986] 5 W.W.R. 75 (Sask.Q.B.); Lindsay v. Stewart, MacKeen and Covert (above).

46 There are numerous cases where fees have been reduced on the ground that the solicitor failed to keep the client informed of increasing fees. The case of Re Poole and Perrault and White (1981), 12 A.C.W.S. (2d) 130 (Ont.S.C.), is an example

of the opposite and hopefully more common situation. There a large fee was not reduced where it was established that the solicitors, acting in a protracted matrimonial matter, advised the client of the mounting fee and of their rate increases before they came into effect and even urged the client to use restraint in taking up too much time.

47 In this case the solicitors have failed to satisfy me that the client was aware of or acquiesced in the changes in rates. Accordingly the fees charged should be recalculated on the basis of $135 per hour throughout the course of the retainer. I accept the client's calculations that 56.2 hours were charged at $145 and 61.6 hours were charged at $155. If these hours were charged out at $135 per hour the total reduction in fees would be $1,794.00.

UNNECESSARY OR EXCESSIVE WORK:

48 The client raises a number of concerns about excessive or unnecessary charges. In particular he expresses concern about the time spent in preparation for trial (as being disproportionate to the actual trial time).

49 It should be noted that the criminal case was scheduled as a jury trial. It was not until just before the trial date that a re-election was made to a trial by judge alone. I am sure all sorts of factors went into the original decision to have a jury trial and the

ultimate decision to re-elect. The dynamics of a criminal case are unique to each case. Therefore I cannot say what would have been an appropriate time to spend on preparation.

50 I can say, as I did earlier in these reasons, that the client received highly competent and effective representation in a serious and relatively complex case. The potential consequences to the client were extreme to say the least. Any attempt by me to say how much time should have been spent on any aspect of the case would be simply second-guessing the efforts of counsel with the benefit of hindsight.

51 Similarly, I will not engage in an arbitrary item by item evaluation of each particular service provided. Taking a global perspective, and especially considering the importance of the matter to the client, I am not prepared to say that any work performed by Mr. Gorin was unnecessary or excessive or that the total amount billed is so disproportionate to the value received by the client as to call for a significant reduction.

FEES CHARGED FOR OTHER MEMBERS OF FIRM:

52 The accounts and back-up documentation reveal that, besides articled clerks, time was recorded and charged for two partners in the firm (Mr. Cooper and Mr.

Peach) for a total of $616.00: 2.9 hours for Mr. Cooper at $240 per hour and .8 hour for Mr. Peach at $200 per hour. The solicitors have conceded that the charge for Mr. Peach ($160) should not have been made.

53 The charges for Mr. Cooper were comprised of a billing of .9 hour for "discussions" with Mr. Gorin and a further 2 hours for review of an expert report. Mr. Gorin also recorded further conferences with Mr. Cooper and other members of the firm totalling a relatively minimal .4 hour.

54 There was no question raised about the fees billed for the articled clerks. Obviously it is to the client's advantage to have work done by less costly members of the firm. The issue is whether the client should pay for the services of a more expensive member of the firm.

55 The solicitor has a duty to inform the client of the participation of other lawyers in the firm, if they are used to a large extent, and the financial consequences thereof: Burnet, Duckworth and Palmer v. Opron (1985), 64 A.R. 235 (Q.B.). Here the charges for more senior members of the firm were relatively minimal.

56 The issue that concerns me, notwithstanding the relatively small amount of these charges, is the justification for billing to a client what are essentially "in-house"

consultations. There is no question that if two lawyers in the same firm perform non-duplicative work on the same file ---- work that in each part has value to the client ---- the firm is entitled to bill accordingly. But where one member of the firm simply seeks advice then I think the reasonable comment could be made that that is one of the main reasons why lawyers choose to work in a firm. The opportunity to gain the advice of others is a major aspect of the general team approach that many firms like to project. But should a client pay separately for that consultation? Case law suggests that each solicitor taking part in such consultation should not charge the client at his or her full billing rate: Re Mingay and Associates and Minister of Housing (1982), 7 A.C.W.S. (2d) 212 (Ont.S.C.).

57 In this case the client, through whatever advice was imparted to Mr. Gorin, gained the benefit of Mr. Cooper's skill and expertise. That is worth something. But I do not think it is reasonable for the time of both lawyers to be charged to the client for these consultations. The time spent by Mr. Gorin (.9 hour x $135 = $121.50) will be disallowed. The amount will be small but the principle is important.

58 The 2 hours recorded and charged for Mr. Cooper's review of the expert report is a reasonable item since presumably the client benefitted, again through the advice given to Mr. Gorin, for this review.

59 Solicitors' counsel submits that all the time recorded for consultations with others is reasonable because not all of the time was either recorded or billed. I simply repeat what I said earlier about the practical impossibility of making a meaningful assessment of such submissions without evidence and in the face of inconsistent and incomplete billing practices.

THE RETAINER FOR TRIAL:

60 As previously noted, the solicitors made a written demand, by way of Mr. Gorin's letter of October 14, 1993, for a further retainer of $2,000 since it was "firm policy to request an additional retainer before a trial date in an amount which is likely to cover fees incurred during the trial period."

61 Solicitors' counsel submits that the letter does not give an estimate of the fees for the trial as $2,000 but merely asks for this amount as a further retainer to secure representation at trial. Mr. Gorin testified that at no time did he give a "ballpark" figure either for the entire defence or for the trial. Client's counsel does not say that this demand should be treated as an "estimate" to which the solicitors should be bound but merely as a representation of the anticipated costs of trial which can be used, by way of comparison, to assess the reasonableness of the final fee account (which charged fees of $10,403).

62 It seems to me that the demand comes perilously close to an estimate of fees for the trial. In such cases solicitors have often been held to such estimates especially if the client has a reasonable expectation of the range of fees to be charged as a result of such estimates: Re Kozaroff (1981), 21 C.P.C. 3 (Ont.S.C.); Cohen v. Kealey and Blaney (1985), 26 C.P.C. (2d) 211 (Ont.C.A.). As stated by Jewers Co. Ct. J. in Alexander v. McKenzie, [1984] 5 W.W.R. 635 (at page 637):

> In my view, solicitors must be very careful about giving estimates to clients. The clients have no idea of what time might or would be involved in court proceedings, and are utterly dependent upon their solicitors for advice in this regard. A solicitor should make clear to his client that the time estimated for a proceeding is only an estimate, and might very well be exceeded, and further, a solicitor should ensure that his client is kept abreast of proceedings and any anticipated or likely change in the original time estimates.

63 In this case, having regard to the history of the litigation and the seriousness of the charge, I do not think the client could have had any reasonable expectation of the fees for the trial being in the range of $2,000. The letter in question simply asks, albeit badly, for a further retainer to be applied toward further anticipated fees. In another circumstance, however, it may easily be concluded that a retainer "which is likely to cover fees incurred during the trial period" means that it is an estimate of the likely fees.

CONCLUSION:

64 The fees charged to the client should, for the foregoing reasons, be reduced by $2,075.50 calculated as follows:

(i)	standard rate of $135 per hour	-	$1,794.00
(ii)	deduction of Peach billing	-	160.00
(iii)	deduction of consultation time	-	121.50
		TOTAL:	$2,075.50

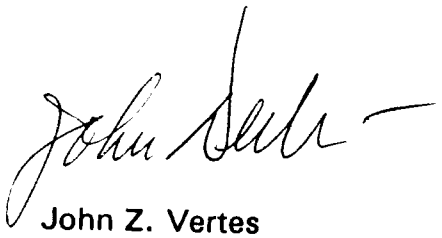
65 Since all accounts save the last two have been paid, the reduction is to be applied to the account of November 16, 1993. That account is therefore certified in the amount of $9,311.17, calculated as follows:

(i)	fees ($10,403.00 less $2,075.50)	-	$8,327.50
(ii)	taxable disbursements	-	373.59
(iii)	non-taxable disbursements	-	1.00
(iv)	goods and services tax	-	609.08
		TOTAL:	$9,311.17

66 The account of December 3, 1993, since it covers only disbursements, is certified in the amount of $201.25 as billed.

67 Since the solicitors have not sought interest on this taxation there will be none awarded.

68 With respect to costs, the client has been somewhat successful. It took, however, the solicitors to press the matter forward to taxation. Therefore there will be no costs on this taxation.



John Z. Vertes
J.S.C.

Counsel for the Plaintiffs
(Solicitors): Geoffrey P. Wiest

Counsel for the Defendant
(Client): James D. Brydon

CV 05049

IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES

BETWEEN:

DONALD M. COOPER, Q.C., RICHARD J. PEACH, EDWARD W. GULLBERG, GEOFFREY P. WIEST, and SHEILA M. MACPHERSON, carrying on business under the firm name and style of COOPER, PEACH AND GULLBERG

Plaintiffs

- and -

WALTER ENGLAND

Defendant

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES