SUPREME COURT OF NOVA SCOTIA
Citation: *Fraser v. MacIntosh-Wiseman*, 2025 NSSC 300

Date: 20251008
Docket: Hfx No. 522092
Registry: Halifax

Between:

Donn Fraser and DLF Law Practice Incorporated, a body corporate

Plaintiffs

v.

Sarah MacIntosh-Wiseman

Defendant

DECISION

Judge:	The Honourable Justice John A. Keith
Heard:	April 29, 2024 in Halifax, Nova Scotia
Final Written Submissions:	April 4, 2025 April 11, 2025
Counsel:	Self-represented, for the Plaintiffs Self-represented, for the Defendant

By the Court:

INTRODUCTION

[1] This action arose out of an email initially sent to the Plaintiff, Fraser, by the Defendant Sarah MacIntosh-Wiseman ("**MacIntosh-Wiseman**") on March 9, 2021 (the "**March 9, 2021 Email**"). MacIntosh-Wiseman's father, Bruce MacIntosh, distributed the same email to the partners and the office manager of the now defunct law firm known as Mac Mac & Mac. At the time, Fraser was also a partner at Mac Mac & Mac. MacIntosh-Wiseman was a former partner. Fraser alleged that the March 9, 2021 email was defamatory and publicly placed him in a false light. A copy of the impugned email is attached at Schedule "A".

[2] Applying the five part summary judgment test in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, I granted MacIntosh-Wiseman's motion for summary judgment on the evidence and dismissed Fraser's claim (2024 NSSC 378). A detailed explanation as to my reasons are contained in that decision. At the risk of oversimplification and among other things, there were no genuine issues of material fact and the claim was insufficient to meet the threshold for defamation or placing in a false light under Canadian law. The Plaintiff's claim had no real chance of success. When placed in its proper context, the March 9, 2021 Email would not be viewed as defamatory by a reasonable person.

[3] That decision is under appeal.

[4] Costs, if any, payable in connection with MacIntosh-Wiseman's motion for summary judgment were to be determined.

[5] MacIntosh-Wiseman filed written submissions seeking enhanced or solicitor and client costs against Fraser in the amount of $111,324.86. In support of this request, MacIntosh-Wiseman filed the following documents:

1. MacIntosh-Wiseman's own affidavits. I note that MacIntosh-Wiseman's original affidavit was sworn on February 28, 2025. It was incomplete. A number of paragraphs referenced documents that were

not included as exhibits.[1] MacIntosh-Wiseman filed a supplemental affidavit on March 18, 2025, which confirms the error and attaches the missing documents as exhibits, beginning at Exhibit U. In the interest of simplicity and unless noted otherwise, I refer to the "**MacIntosh-Wiseman Affidavit**" incorporating the missing exhibits as part of the February 28, 2025, affidavit; and

2. An affidavit from her former counsel of record, Peter Rogers, K.C. (the "**Rogers Affidavit**").

I refer to these affidavits collectively as the "**Defendant's Affidavits**".

[6] MacIntosh-Wiseman's evidence and submissions are focussed primarily on the question of civility and its impact on costs. The Defendant's Affidavits recount incidents and interactions with Fraser which she describes as "litigation malice"; "flagrantly offensive, repellent, and unworthy"; "weaponization of the legal system"; "vengeful focus on reputational damage"; and "reprehensible."[2] MacIntosh-Wiseman concludes that Fraser engaged in verbal abuse and a disparaging litigation style to wage a vindictive campaign of harassment and intimidation resulting in unnecessarily fraught litigation that took a severe financial and emotional toll on her. She seeks solicitor and client costs against Fraser.

[7] Before responding to MacIntosh-Wiseman's Affidavits, Fraser moved to strike virtually the entire content of the Defendants Affidavits. The written submissions filed by both sides regarding these objections are voluminous, totalling 146 pages excluding authorities.

[8] Many of Fraser's objections combine a litany of various distinct evidentiary concepts including "irrelevant", "subjective viewpoint", "subjective characterization", "opinion", "submission", "argument" and, in some cases, "hearsay". However, the crux of Fraser's concern is that the information in the Defendant's Affidavits is largely irrelevant and distracts from (rather than inform) the issue of costs. He does not hide the fact that he loathes the Defendant, her family, and certain of his former law partners. He also condemns the ethics and professionalism of the Defendant's former legal counsel, Brian Casey, K.C. of the law firm Boyne Clarke, Peter Rogers, K.C. and Raylene Langor of McInnes Cooper as well as the billing practises of McInnes Cooper as a whole. Regardless, again,

[1] Paras. 11, 20, 21, 43, 44, 46, 48, 49, 55, 68, and 70 of MacIntosh-Wiseman's February 28, 2025, Affidavit reference documents that were not attached as exhibits.
[2] See, for example, paras. 1, 7, 10, 19, 29, 32, 47, 49, 50, and 57 of MacIntosh-Wiseman's written submissions.

Fraser maintains that the impugned conversations largely occurred outside the judicial process and have nothing to do with an assessment of costs. Moreover, Fraser states that certain aspects of the MacIntosh-Wiseman Affidavit involve separate proceedings and that her attempt to leverage those proceedings to achieve an enhanced costs award is improper. Fraser contends that MacIntosh-Wiseman's Affidavits were really designed to smear him and that, in the circumstances, it is MacIntosh-Wiseman who is guilty of litigation misconduct.[3]

[9] If any of the impugned evidence is deemed relevant and material, Fraser further argues the following:

1. Much of MacIntosh-Wiseman's testimony is either "delusional"[4] ; "crazy" or "raving"[5] ; or "false" and/or "misleading"[6] , and therefore must be given no evidential weight;
2. MacIntosh-Wiseman's impugned testimony is otherwise inadmissible on a number of other grounds, including hearsay, inconsequential narrative, opinion (or "subjective viewpoints"[7]), and/or information in the nature of argument or submission; and
3. MacIntosh-Wiseman's criticisms of (or interactions with) Fraser and the other related individuals (e.g. members of MacIntosh-Wiseman's family or her legal counsel) are neither relevant nor appropriate, in the circumstances. He reserves the right to present further evidence to support his position. However, Fraser repeatedly expresses the hope to avoid "burdening" the Court and "pile on evidence going to the absolute veracity of everything asserted"[8] .

[3] See paras. 13, 21, 36, 42, 49, 51, 54, 57, 62, 70, 78, 92, 97, 101, 112, 113, and 158 of Fraser's written submissions and paras. 2, 3, 4, 5, 6, 7, 10, 11, 15, 21, 37, 39, 42, 49, 51, 54, 57, 62, 70, 71, 73, 78, 92, 97, 101, 112, 113, 121, 158, 160 of Fraser's reply brief.
[4] See, for example, paras. 5, 49, 52, 70, 74, 87, 90, 125, 138, and 161 of Fraser's submissions, and paras. 5, 7, 22, 70, and 114 of Fraser's reply submissions filed April 9, 2025.
[5] See paras. 49(g), 107, 108, 110, and 134 of Fraser's submissions.
[6] See paras. 3, 16, 33, 35, 36, 49, 51, 54, 57, 59, 62, 64, 66, 69 - 76, 77, 81, 83, 90, 93, 94, 100, 101, 110, 113, 114, 116, 119,122, 123, 125, 128, 134, 136, 138, 142, 144, 148, 151, 153, 161, 163, 165, 169, 171, 178, 188, 192, 195, and 198 of Fraser's submissions, and paras. 4, 5, 6, 21, 46, 51, 52, 55, 57, 59, 60, 62, 76, 77, 99, 108, 119, 128, 134, 135, 139, 140, 142, 143, and 144 of Fraser's supplementary submission.
[7] See for example, Fraser's submissions at paras. 13, 49, 52, 67 – 69, 72, 75, 81, 83, 90, 93, 100, 101, 103, 122, 123, 129, 136, 148, 163, 167, 188, 192 and 198.
[8] Plaintiff's submissions at paras. 48, 60, 89, 96, 98, 104, 108, 114, 120, 135, 145, 146, and 186; and paras. 107, 155, and 159 of Fraser's reply submissions

[10] This decision addresses Fraser's evidentiary objections. I begin with certain basic background information to help frame the proceedings generally and this motion in particular. I then summarize the controlling law with a specific focus on the issue of civility in the context of costs, as this is a central point of contention here. Finally, I list each of Fraser's specific objections in the attached Schedules "B"(MacIntosh-Wiseman Affidavit) and Schedule "C" (Rogers' Affidavit) and apply the law accordingly.

BASIC BACKGROUND

[11] The story behind the March 9, 2021 Email begins two years earlier, on March 31, 2019, when Fraser and MacIntosh-Wiseman were partners at Mac Mac & Mac. Briefly, MacIntosh-Wiseman decided to take a leave of absence from the firm to take the role of CEO with the Pictou County Regional Enterprise Network ("**REN**"). Her leave began on Monday, April 1, 2019.

[12] The day before MacIntosh-Wiseman left for REN (Sunday, March 31, 2019), she sent an email to the entire firm at 4:36 p.m.. In that email, she confirmed her imminent departure. She also said that she was not leaving for good; adding that she'll "still be kicking around the office as well".

[13] The suggestion that MacIntosh-Wiseman might still be working on firm files while on leave concerned Fraser. Within 20 minutes, he sent an email to his five partners (including MacIntosh-Wiseman) asking that a number of related issues be placed on the agenda for consideration at the next partnership meeting and concluding by saying that he would be grateful if MacIntosh-Wiseman "….would slow [her] roll on holding anything out to staff/associates and certainly people outside the firm on what is going to happen on any of these points until decisions are actually made at the partnerhsip [sic.] table."

[14] MacIntosh-Wiseman responded to a more limited list of recipients: Fraser and the firm's managing partner, Julie MacPhee. MacIntosh-Wiseman indicated that she had been discussing these issues with Ms. MacPhee. However, she noted that if Fraser thought she "… said something inappropriate in my email I am happy to adjust any messaging in keeping with partnership wishes."

[15] The email exchange between Fraser and MacIntosh-Wiseman continued into the night. Their tone deteriorated as the night wore on. The dispute flared when Fraser and MacIntosh-Wiseman began latching on to particular words being used by

the other and adorning those words with quotation marks to mark what they viewed to be an implied insulting or negative connotation.[9]

[16] The exchange culminated with a late-night email sent at 12:01 a.m. on April 1, 2019, when Fraser seized on MacIntosh-Wiseman's use of the word "preference" when she wrote: "If your [Fraser's] preference is that I not continue to do work for the firm then it would be helpful to know that explicitly so that we can discuss next steps" (underlining added). Fraser launched into a more pointed criticism of MacIntosh-Wiseman, personally and professionally. He wrote:

> My "preference" would be now, in the near term, and into the extended future, as it has always been, for you and I to move forward as partners under the equal effort premise of the partnership agreement. My "preference" is not you working effectively only one out of three months, as was the case when you were frittering off on your personal interests over the firm's at the end of 2018 (while others were drowning). My "preference" is not a variation of at frittering off that has been formalized for the next two years while the rest of us keep the lights on. Do not even begin the [sic.] to put a glaze on any aspect of this as something you are undertaking for the firm. My "preference" would be you working, as my partner, taking file responsibility and pulling the same weight.

[17] Upset by the email, MacIntosh-Wiseman wrote Ms. MacPhee the next morning and said that she was considering resigning as a partner. Shortly thereafter, Fraser apologized for the tone and timing of his email, but not its substance.

[18] MacIntosh-Wiseman decided not to resign her partnership interest at that time. About a year later on March 8, 2020, MacIntosh-Wiseman reconsidered and resigned from the firm, effective December 31, 2019.

[19] About a year after that, MacIntosh-Wiseman sent her March 9, 2021 Email which led to this action. MacIntosh-Wiseman began the March 9, 2021 Email by explaining why it was being written. In brief, MacIntosh-Wiseman said that she was

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[9] At 6:03 on March 31, 2021, Fraser's email recalled that: "There was an expression that you [MacIntosh-Wiseman] wanted some limited ongoing work, without much by way of specifics, but not agreement or discussion around it…. I had no intention of trying to torpedo what you may be after, if it does not prejudice us over the next two years." (underlining added). At 10:12 p.m., MacIntosh-Wiseman zeroed in on to the underlined words and replied at 10:12 p.m. saying, inter alia "I have not "wanted" limited ongoing work. Nor have I been "after" anything. To the contrary, my life would be much simpler and, to be frank, my financial situation would be more comfortable if I were taking a clean break." Her email ended with: "If your [Fraser's] preference is that I not continue to do work for the firm then it would be helpful to know that explicitly so that we can discuss next steps. If it is another issue (or issues) then let's be clear about exactly what lies at the root so we can figure out how to move forward, whether together or separately" (underlining added). At 12:01 a.m., Fraser focussed in on the underlined word "preference", described in greater detail in paragraph 16 below.

declining Fraser's recent invitation to go for a beer due to concerns about inaccurate statements Fraser shared with MacIntosh-Wiseman's former (and Fraser's current) law partners regarding her career and her past decision to leave the firm.

[20] The email proceeded to reignite the tensions stemming from the March 31 - April 1, 2019, Email exchange. MacIntosh-Wiseman recalled being hurt by the harsh and disrespectful tone of Fraser's April 1, 2019, midnight Email. She also said that it was "directly responsible" for her subsequent decision to resign as partner in 2020 and leave both a law practice she loved and excelled at along with a law firm to which she held deep family ties.

[21] MacIntosh-Wiseman separately sent a copy of the March 9, 2021 Email to her father, Bruce MacIntosh, K.C. Mr. MacIntosh was a partner at the same law firm. MacIntosh-Wiseman understood that Mr. MacIntosh would share the email with the other Mac Mac & Mac partners and its office manager.

[22] The March 9, 2021 Email circulated at a volatile moment in Mac Mac & Mac's history. The partnership engulfed in conflict, with Fraser being at the centre of the controversy. By late September 2021, the partnership was dissolved.

[23] On March 10, 2023, the Plaintiffs commenced this action against the Defendant, Sarah MacIntosh-Wiseman, alleging that the March 9, 2021 Email was defamatory and seeking damages, including losses allegedly suffered as a result of the law firm's implosion.

[24] Fraser included Mr. MacIntosh's role in this claim as a material fact in his claim against MacIntosh-Wiseman.[10] However, the Plaintiffs also launched a second, separate action against Mr. MacIntosh individually. That action included a claim in defamation for his role in distributing the March 9, 2021 Email based on the same facts and circumstances which gave rise to this action.

THE LAW

Civil Procedure Rules

[10] Para. 28 of the Second Amended Statement of Claim states, *inter alia*: "[MacIntosh-Wiseman's] father then on the [MacIntosh-Wiseman's] behalf and with her agreement, authorization and direction further published her March 2021 Email to all partners in MMM [Mac Mac & Mac] and an office manager on March 11, 2021." These publications and republications by Mr. MacIntosh to Fraser's law partners form a central part of Fraser's claim for relief. See, for example, paras. 32 and 33 of the Second Amended Statement of Claim.

[25] "A party may only file an affidavit that contains evidence admissible under the rules of evidence, these Rules, or legislation" (*Civil Procedure Rule 39.02*). *Civil Procedure Rule 39.04(2)* continues:

> (2) A judge must strike a part of an affidavit containing either of the following:
>
> (a) information that is not admissible, such as an irrelevant statement or a submission or plea;
>
> (b) information that may be admissible but for which the grounds of admission have not been provided in the affidavit, such as hearsay admissible on a motion but not supported by evidence of the source and belief in the truth of the information.
>
> (Emphasis added).

[26] The mandatory language of *Civil Procedure Rule 39.04(2)* is significant, having regard to *Civil Procedure Rule 2.03(3)(a)*, which confirms that the Court's general discretion to excuse compliance with a rule does not extend to "a mandatory provision requiring a judge to do, or not do, something". In other words, if a portion of an affidavit meets the criteria of *Civil Procedure Rules 39.04(2)(a)* or *(b)*, the motion judge has no choice but to strike it.

[27] The Civil Procedure Rules around affidavits reflect the evidentiary standards established at law and the Court's related commitment to protect the integrity of the judicial process. They also re-affirm Justice Davison's warning in *Waverley (Village) v. Nova Scotia (Acting Minister of Municipal Affairs)*, 1993 NSSC 71 ("***Waverley***"), that "Great care should be exercised in drafting affidavits" (at para. 13). He continued at para. 14:

> Too often affidavits are submitted before the court which consist of rambling narratives. Some are opinions and inadmissible as evidence to determine the issues before the court. In my respectful view the type of affidavits which are being attacked in this proceeding are all too common in proceedings before our court and it would appear the concerns I express are shared by judges in other provinces.

See also *McDonald v. Hue*, 2024 NSSC 24, at para. 21.

[28] At the same time, neither the *Civil Procedure Rules* nor *Waverley* compel parties to insist upon evidentiary perfection at the expense of proportionate proceedings. Nor should these authorities be interpreted as an open-invitation to pursue every possible evidentiary objection, regardless of its significance. Trials could never be efficiently concluded if parties felt either entitled or, worse, obliged to object every time any witness makes a statement that might be viewed as

potentially offside. Moreover, there is a justifiable expectation that judges appreciate, for example, when an inadmissible submission is masquerading as admissible information and will afford it no evidentiary value.

[29] This does not mean that the laws of evidence will be sacrificed on the altar of efficiency. Nor does it mean that transparent decision-making yields to an opaque form of unfettered judicial discretion exercised quietly behind the-scenes. Parties are entitled to judicial determinations that are not simply speedy and inexpensive but also just (*Civil Procedure Rule 1.01*). If there is a legitimate evidentiary objection, the Court will consider it and rule accordingly. However, the Courts retain the jurisdiction to manage civil proceedings. Justice and access to justice demand that the *Civil Procedure Rules* be interpreted and applied in a way which ensures proportionate proceedings (*Hryniak v. Mauldin*, 2014 SCC 7 at paras. 4 – 5 and footnote 3). At a minimum, there may be cost consequences where the value of the impugned evidence is significantly outweighed by the costs and delay associated with pursuing an objection.

Evidence Must be Relevant, Material, and Admissible

[30] "To be receivable … evidence must be relevant, material and admissible" (*R v. Candir (E.)*, 2009 ONCA 915 ("***Candir***"), at para. 46). These three words ("relevant", "material", and "admissible") often overlap and, indeed, share the common goal of ensuring that the evidence which is folded into the judicial decision-making process meets established standards. It is useful to begin with a summary of their definitions and conceptual differences:

1. Relevance, generally speaking, refers to the reasoning process through which a particular piece of evidence is connected to (or contributes to the proof of) a fact. "The threshold for relevance is not high. To determine whether an item of evidence is relevant, a judge must decide whether, as a matter of human experience and logic, the existence of a particular fact, directly or indirectly, makes the existence of a fact more probable than it would be otherwise" (*Candir* at para. 48);
2. Materiality considers the significance of the evidence within the context of the controlling law. The concept of materiality ensures that the evidence remains anchored in the applicable law. A piece of evidence may be "relevant" in the sense that it makes the existence of

a fact more probable than not. However, that same piece of evidence is not "material" unless the related fact actually bears upon a live legal issue (*R v. Calnen*, 2019 SCC 6, at para. 109). A "material" fact is one which will affect the outcome of a trial (*Tri-County Regional School Board v. 3021386 Nova Scotia Limited*, 2021 NSCA 4, at para. 20). Overall, again, the concept of materiality ensures that the evidence remains grounded in that which is legally significant. The inquiry into materiality often begins with the pleadings. Among other things, the pleadings must state the key material facts that ground the legal cause of action being pursued and, as well, provide enough detail to avoid surprising the other party (Rule 38.02). On this, it should also be noted that a piece of information is not magically made material simply because it can be connected to a statement in the pleadings. Artful pleadings containing information of marginal significance are not determinative of materiality (*Intact Insurance Company v. Malloy*, 2020 NSCA 18, at para. 35). Again, materiality is anchored in the law - not imagination or prurient interest;

3. While conceptually distinct, notions of "relevance" and "materiality" work in tandem. Indeed, by definition, evidence only becomes relevant if it is also material. In *R v L.S.*, 2017 ONCA 685, the Ontario Court of Appeal wrote at para. 89: "Evidence does not have to establish or refute a fact in issue to be relevant; it need only, as a matter of common sense and human experience, have some tendency to make the existence or non-existence of that material fact more or less likely." (emphasis added) For clarity and unless otherwise noted, where I use the words "relevant" or "relevance" below, it incorporates the notion of materiality, by definition; and

4. Admissibility is an overarching concept which involves the application of certain additional legal principles designed to protect the integrity of the evidence. Even if a piece of evidence may be both relevant and material, the judge may deem it inadmissible if it violates any of these additional principles. These principles include the Court's ultimate residual discretion to reject evidence as inadmissible if its prejudicial effect surpasses its probative value. The rule against hearsay evidence offers a helpful illustration of how these illustrates how these principles and residual discretion operate. Hearsay evidence is an out-of-court statement presented for its truth but in the absence of a contemporaneous opportunity to cross-examine the

> person who made the statement. The hearsay statements may be relevant and material but the dangers associated with simply admitting such statements without the ability to cross-examine the declarant are great and cannot be simply brushed away. At the risk of oversimplification, the hearsay statement may only received if they either fall within certain accepted, categorical exceptions[11] or, alternatively, meets what has been called the "principled exception" involving an examination into whether the presumptively inadmissible hearsay meets the applicable thresholds of necessity and reliability. However, even if one of these exceptions apply, the judge still retains the residual discretion to exclude it if its prejudicial effect outweighs its probative value (see *R v. Khelawon*, 2006 SCC 57 ("***Khelawon***") at paras 3 and 49; *R v. Bradshaw*, 2017 SCC 35 ("***Bradshaw***") at paras. 20 – 24; *R v. Charles*, 2024 SCC 29 ("***Charles***") at paras. 43 - 45; and *R v. Seaboyer*, [1991] 2 SCR 577 at paras. 42 - 46).

Relevance in the Context of Costs

[31] A judge maintains the general discretion to make any order about costs necessary to do justice between the parties (*Civil Procedure Rule 77.02*). A judge's general discretion is constrained by the following complementary objectives that inform and guide an award of costs:

1. Indemnification for expenses reasonably associated with the conduct of litigation; and
2. Ensuring that parties approach litigation in a fair, responsible, and efficient manner. This includes, for example, encouraging settlement, winnowing or deterring frivolous claims or defences, discouraging unnecessary procedural steps, and facilitating access to justice.

See *British Columbia (Minister of Forests) v. Okanagan Indian Bank*, 2003 SCC 71, at paras. 22 and 26; *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, at para. 35; *Orkin on the Law of Costs*, 2nd Edition, at § 2:1; and *Civil Procedure Rule 71.01(1)*.

[11] Examples of the categorical exceptions include: party admissions; spontaneous declarations (*res gestae*); statements of physical, mental, or emotional state; and declarations in the course of duty (business records)

[32] In Nova Scotia, party and party costs of a proceeding are frequently determined by reference to a tariff created under the *Costs and Fees Act*, R.S.N.S. 1989, c. 104, and reproduced at *Civil Procedure Rule 77.06(1)*).

[33] The Tariffs operate primarily through tables which generate cost awards based on certain defined variables that can easily be expressed in clear, numerical values. For example:

1. The cost awards under Tariff A following a trial are, in the first instance, driven by a determination as to the "amount involved" in the litigation. The underlying presumption is that the greater the "amount involved", the greater the costs. In other words, there is a direct correlation between the "amount involved" in the litigation and costs needed to achieve justice between the parties;
2. The costs awards under Tariff C following an interlocutory motions are, in the first instance, driven by a different but equally clear numerical variable: time. The more time taken to argue a motion, the greater the resulting cost award.

[34] The benefits associated with the Tariff are significant. They include simplicity, consistency, and predictability. At the same time, the variables and underlying assumptions embedded within these Tariffs will not always achieve justice between the parties. For example, it may not be possible to accurately or fairly assign an "amount involved" under Tariff A. Or an interlocutory motion governed by Tariff C may required extraordinary pre-hearing effort even though the legal issues are ultimately condensed and heard in a comparatively short period of time. Or the applicable Tariff may not properly reflect the importance and complexity of an issue.

[35] Where the Tariffs no longer prove useful and the Court's discretion is channelled either towards a lump sum costs award (partial indemnity) or, in exceptional and rare situations, solicitor and client costs (full indemnity under *Civil Procedure Rules 77.01(1)(b)* and *77.03(2)* (*Armoyan v. Armoyan*, 2013 NSCA 136, ("***Armoyan***"), at paras. 11 and 18). In *Liu v. Atlantic Composites Ltd.*, 2014 NSCA 58, the Nova Scotia Court of Appeal stated that solicitor and client costs awards are made in "rare and exceptional circumstances" involving conduct that is "reprehensible, scandalous, or outrageous" (at para. 76).

[36] In this case, as indicated, MacIntosh-Wiseman seeks to move outside the Tariff. She claims solicitor and client or enhanced costs.

[37] The issue at this preliminary stage is not whether this is a rare and exceptional case entitling MacIntosh-Wiseman to solicitor and client or enhanced costs. Rather, the issue relates to the scope of admissible evidence that MacIntosh-Wiseman may present in claiming costs. The following preliminary factors apply:

1. **Cause of Action**: Unsuccessfully alleging especially egregious misconduct may attract enhanced costs. For example, allegations of quasi-criminal acts (e.g. fraud or deceit), gross misconduct, or scandalous behaviour may give rise to an award of solicitor and client costs. See, for example, *Smith's Field Manor Development Ltd. v. Campbell*, 2002 NSCA 104, where the Nova Scotia Court of Appeal upheld an award of solicitor and client costs amid allegations of fraud and dishonesty (at paras. 75 – 81);
2. **Date of the Impugned Evidence:** Subject to the allegations which gave rise to the pleaded cause of action, pre-litigation conduct will generally not influence a costs award (*Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, at paras. 40 and 53; leave to appeal denied, 2020 CarswellBC 422 (SCC)). Similarly, post-litigation conduct may impact the assessment of costs in other (including subsequent appeal) proceedings but are unrelated to the conduct of the litigation in the first instance There may be narrow exceptions, including where the prior misconduct provides necessary context sufficiently connected to the litigation (see, for example, *Maher v. Credit Valley Golf & Country Club Ltd.* (1995), 55 A.C.W.S. (3d) 480 (Ont. Div. Ct.)).;
3. **Behaviours Which Impact the Conduct of the Proceedings**: As indicated, the Court's discretion in awarding costs is informed by the dual and complementary goals of indemnifying a successful party for litigation expenses and promoting fair, responsible, and efficient behaviour in legal proceedings. There are innumerable forms of behaviour which may be reasonably linked to these complementary goals. By way of illustration, they include:
    a. Whether a party has observed the requirements of the Civil Procedure Rules;

b. Whether there has been compliance with court orders;

c. Delay or procedural disruption caused by such things as failing to respond to reasonable requests in a timely manner, belated discovery or disclosure, abusive disclosure (either by omission or by avalanche), last-minute filings, adjournment of court proceedings, exploiting financial superiority to engage in a war of attrition, or lack of preparedness;

d. Advancing clearly unsustainable arguments including providing misleading information regarding the governing legal authorities;

e. Presenting deceitful or patently dishonest evidence;

f. Failing to properly consider reasonable settlement offers;

g. Incivility; and

h. Generally speaking, actions that affect the fairness and integrity of the litigation process.

[38] No one factor is determinative, given priority, or assigned a particular weight when assessing costs. The Court's general discretion governs.

[39] As indicated, a key issue in this costs dispute relates to civility. I turn to that issue next.

Civility and Its Importance in the Litigation Process

[40] It is helpful to begin by summarizing the nature and importance of civility in litigation.

[41] The complexity of the English language is such that, like so many other words, the meaning of the word "civil" is highly dependent on context. There are civil wars, civil disobedience, civil unions, civil engineers, civil servants, civil procedures, civil rights, etc. In this case, the word "civil" is linked to the act of acting in a "civil" manner for the purpose of assessing litigation costs . In general terms, the Court considers whether a litigant's actions conform with accepted norms and the extent to which any such actions engage the twin objectives that drives a costs assessment (indemnification and ensuring fair and efficient judicial proceedings).

[42] Stepping back to examine the concept of civility alone, civility contemplates mutual respect for the process and the absence of exceedingly rude or disruptive

behaviour. At the same time, civility neither muzzles free speech nor stifles fair criticism nor mandates some affected form of phony politeness.

[43] In Canada, civility operates in the context of an adversarial process where the parties are free to attack the opposing position. As such, the boundaries of civil behaviour must expand to accommodate sharp, difficult commentary. Adverse parties locked in litigation must be able (and may be compelled) to confront uncomfortable, even offensive, facts. To fearlessly defend their opposing positions, litigants must be afforded the freedom of their own minds, including the opportunity, where appropriate, to make comments that may seem distasteful or unpopular (*Groia*, at para. 73). As the Supreme Court of Canada observed in *Groia*: "…trials are not — nor are they meant to be — tea parties" (at para. 4).

[44] All that said, civility ensures that these adversarial and, at times, difficult exchanges occur in a manner that is constructive. Civility enables people locked in conflict may work out their differences in a process dedicated to focussed and principled discussion. Civility, as the name suggests, exerts a moderating and civilizing influence on the litigation process.

[45] The adversarial process has been compared to a crucible. The analogy works well because both the crucible and the adversarial process involve testing material under intense and procedurally rigorous pressure. However, critically, the process is neither indiscriminate nor deliberately injurious. Civil litigation and the crucible contemplate actions that are specifically designed to be penetrating but also controlled and disciplined. They may create conditions that are severe and even searing. But they are driven by a search for truth - not intentional or reckless destruction.

[46] In litigation, the concept of civility recognizes and reinforces these important distinctions. It strikes a proportionate balance between expressive rights (including zealous advocacy and, potentially, forceful criticism) and respectful debate (including controlled and purposeful interactions).

[47] The Supreme Court of Canada decision in *Groia v. Law Society of Upper Canada*, 2018 SCC 27, ("***Groia***"), and its predecessor *Doré c. Québec (Tribunal des professions)*, 2012 SCC 12, ("***Doré***"), reinforce the importance of civility among lawyers. In *Doré*, Abella, J. wrote at para. 61 that:

> No party in this dispute challenges the importance of professional discipline to prevent incivility in the legal profession, namely "potent displays of disrespect for the participants in the justice system, beyond mere rudeness or discourtesy.

[48] In *Groia*, the Supreme Court of Canada noted that civility is not simply a matter of professional ethics, but is integral to a just and efficient litigation process. At paras. 1-2, Moldaver, J. spoke to these broader demands when he wrote:

> Trials are the primary mechanism whereby disputes are resolved in a just, peaceful, and orderly way.
>
> To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.

[49] At para. 63 of *Groia*, Moldaver, J. also quoted Morden, ACJO who reflected: "Civility has been described as 'the glue that holds the adversary system together, that keeps it from imploding'."

The Test for Incivility in Matters Involving Alleged Professional Misconduct May Not Be Simply Superimposed to the Costs Analysis

[50] An issue arises in this case as to the factors and priorities that govern the impact of civility in a costs assessment. As indicated, *Groia* makes a number of broad statements regarding the importance of civility in litigation generally. I agree that there are certain areas where the Supreme Court of Canada's discussion of civility in *Groia* influences the discussion of civility in the context of costs and, by extension, the admissible of evidence pertaining to that issue. They include:

1. Civility generally pertains to the manner in which litigation is carried out. Thus, both *Groia* and *Doré* considered how a lawyer conducted themselves while being involved in litigation. The same basic reality applies when considering civility in the contest of costs. The focus is on <u>how</u> litigants (or their legal representatives) behave and interact with one another and the Court; and
2. The notion of civility embodies certain essential or foundational concepts which apply regardless of context. Generally speaking and as mentioned, civility speaks to the manner in which litigation is undertaken. It demands that litigants resolve their disputes through structured, principled, and rational dialogue – not raw conflict or

> chaotic, unnecessarily abusive confrontation. These basic requirements resonate in both *Groia* and *Doré*, and they similarly inform any discussion of civility, regardless of the underlying circumstances.

[51] That said, *Groia* and *Doré* examined the notion of civility in the context of professional misconduct proceedings against lawyers. *Doré* involved a scathing and denunciatory letter which a lawyer privately sent to a judge. The lawyer's actions were deemed unethical. *Groia* concerned whether a defence lawyer's (Joseph Groia's) in-court criticisms of the prosecution counsel crossed the ethical line. The Supreme Court of Canada found that Groia's impugned acts did not constitute an unethical display of incivility because, even though they were based upon an objectively unreasonable mistake of law, they were taken in good faith. Thus, the Court overturned earlier professional misconduct findings and dismissed the case against Groia. (*Groia* at para. 97) In other words, the Supreme Court of Canada in *Groia* determined that the test for civility involved an assessment as to whether the impugned statements were made in good faith and had a reasonable basis. (at paras. 85 – 96)

[52] Fraser contends that this same test for civility (i.e. good faith and whether there was a reasonable basis for the impugned acts) applies with equal force in this case. (Fraser's submissions at paras. 81 – 97) Thus, Fraser seeks the opportunity to prove the "absolute veracity" of every impugned act to prove that his impugned actions were in good faith and had a reasonable basis - although he hopes that it will not be necessary to "pile on" the evidence as it would impose a heavy burden on the parties and the Court.

[53] Respectfully, the test for civility as expressed in *Groia* cannot simply be superimposed on the costs analysis. The focus and underlying objectives change when the issue shifts from professional misconduct to costs. The Court's approach to civility must be modulated to acknowledge and accommodate this change. For present purposes, it necessary to understand this the differences in order to properly identify what evidence is relevant to costs, having regard to the controlling law.

[54] In *Groia*, the Supreme Court of Canada confirmed that the Court must consider whether the impugned statements were made in good faith and had a reasonable basis. Breaking this down further, reasonableness examines the foundation of the lawyer's belief from a single, objective standard of competence. The issue is whether the lawyer knew or objectively knew or ought to have known that his/her actions were uncivil. By contrast, good faith speaks to whether a lawyer

actually and sincerely believed that the impugned actions were appropriate in the circumstances.

[55] These two concepts may mingle in the sense that the reasonableness of an allegedly uncivil act may become a relevant consideration when assessing whether that act in good faith. A preposterously unreasonable act may cause a Court to question the sincerity of the lawyer who insists their impugned acts were taken in good faith. Nevertheless, the concept of good faith still admits the possibility that a lawyer may sincerely believe their actions were taken in good faith, even if that sincere belief was objectively unreasonable and based on a mistaken view of the law. If the Court accepts that the lawyer did act in good faith, allegations of an ethical breach may be avoided. That is precisely what occurred in *Groia*. (*Groia* at paras. 94 – 96)

[56] The Supreme Court of Canada's reasoning in reaching these conclusions are germane. The reputational risks which arise when a lawyer is disciplined for professional misconduct figured prominently in the majority's discussion of civility and greatly influenced their formulation of the test for assessing how the concept of civility. A finding of professional misconduct "can itself be damaging to that lawyer's reputation," which is "the cornerstone of a lawyer's professional life." (*Groia* at paras. 85[12] and 90) To avoid undue harm to a lawyer's reputation and to better ensure fearless advocacy, the Court rejected standards that might unjustifiably punish sincere but mistaken actions. As Moldaver, J. wrote for the majority in *Groia*: "this would risk unjustifiably tarnishing a lawyer's reputation and chilling resolute advocacy." (at para. 95).

[57] The impact of civility and the nature of the analysis changes when the issue shifts from professional discipline to costs. The reasons include:

1. The underlying focus and supporting policy objectives are very different. With costs, the Court retains the general discretion to grant an award that:
    a. "[W]ill do justice between the parties" (Rule 77.02, emphasis added) – as opposed to adjudicating upon an ethical concern regarding a lawyer; and

[12] Describing a lawyer's reputation as the "cornerstone" of their professional life was taken from the earlier decision of Cory, J. in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.), at para. 118.

b. Achieves the overarching goals of indemnification and promoting fair, responsible, and efficient behaviour as between the parties – as opposing to regulating a lawyer's ethical behaviour.

These foundational objectives do not predominate in professional misconduct hearings. With professional misconduct, the focus is on the lawyer and, more specifically, the lawyer's motivations and intentions or why the lawyer acted in the way s/he did. Were the impugned acts in good faith and did they have a reasonable basis? When the issue turns to costs, the Court becomes increasingly focussed on how the party's acts impacted the litigation and the extent to which the impugned acts triggered the goals of indemnification and fair, efficient proceedings. This is not to say that evidence suggesting that the impugned acts were taken in good faith or had a reasonable basis is necessarily irrelevant or immaterial. On the contrary, it may well be relevant to costs for alleged uncivil behaviour. However, this type of evidence is not determinative. Thus, a party's entitlement to indemnification for costs for alleged incivility does not equate to an ethical breach for the purposes of professional discipline because, again, the focus and objectives are different. The corollary is that the remedy of costs is neither dependent nor conditional upon a finding of professional misconduct – as would be the necessary implication if the test in *Groia* were simply grafted on to the costs analysis. If the *Groia* test were applied without adjustment, the Court's general discretion to make a just cost award would be unduly and improperly constrained. It would unnecessarily warp the nature and purpose of the cost analysis (indemnification and encouraging fair, efficient proceedings) by importing concerns around an entirely different, separate legal and factual issues (e.g. an unrelated ethical code and related reputational concerns associated with professional misconduct findings against a lawyer);

2. The underlying reasons which inform the concept of civility vary significantly depending on whether the topic is professional discipline or costs. As indicated, concerns around reputational risks figured prominently in the *Groia* decision where the issue of civility arose in professional misconduct proceedings. The reasoning changes when discussing costs because cost awards reflect the interests of a party

(usually the successful party) - not their lawyers. Rule 77.02 makes it clear that costs awards are intended to achieve justice between the parties. So, among other things, the sort of reputational risks which may influence assessments of incivility in a professional discipline proceeding are of little moment when alleged incivility is considered in the context of costs. A party is not immunized from costs because their lawyer's reputation might be affected. Again, a party's entitlement to costs responds to different concerns and priorities;

3. The consequences associated with a finding of incivility are different. With respect to costs, the consequences are financial in nature, not ethical; and

4. The standard of civility in professional misconduct matters applies to lawyers – not lay persons. The test for incivility is whether the lawyer acted in good faith and had a reasonable basis. When the issues shifts to costs, both lawyers and self-represented lay persons must necessarily become subject to the same standard of civility. All persons engaged in litigation are expected to similarly act in a civil manner – not just lawyers. This means that the concept of civility in the context of costs must be sufficiently expansive to include lay persons who are neither lawyers nor bound by the same ethical codes as persons formally licensed to practise law. It would be unjust to expose a lay person to costs for incivility because they failed to uphold a standard for professional misconduct that does not apply to them and that they may not fully appreciate. It would be equally unjust to immunize a lay person from costs because they can't be expected to act with the same degree of civility as a party represented by counsel. Again, the demands of civility must apply equally to all parties.

[58] For present purposes, a significant implication associated with this shift in focus relates to how the concept of civility is understood and applied when assessing costs. As mentioned, *Groia* confirmed that allegations of incivility in professional misconduct proceedings are determined based on whether the lawyer was subjectively acting in good faith and had a reasonable basis.

[59] For reasons discussed below, a party's good faith and reasonableness belief may be relevant to costs, and particularly solicitor and client costs which addresses behaviour deemed to be egregious. However, unlike professional misconduct cases where the lawyers good faith and reasonableness exert great influence, cost decisions

involve the exercise of a general discretion to achieve costs and, in doing so, balances different concerns and serve different objections. Again, the goals of indemnification and encouraging fair, efficient proceedings are rooted more in how the impugned actions affected adverse parties for costs purposes – and less by the intentions or motivations of those responsible for any alleged incivility. So, for example, alleged incivility may have significantly and unreasonably increased the cost exposure of an opposing party. Or the alleged incivility may undermine the goal of fair and efficient proceedings. In those circumstances, evidence showing that the party may have acted with good faith and had a reasonable basis may be relevant, but it neither invalidates the need for indemnification nor silences the call for fair and efficient proceedings. In short, evidence regarding these issues may be relevant to the issue of civility in the costs context but they are certainly not determinative.

[60] This is not unusual. Parties to litigation are frequently exposed to costs regardless of whether they acted in good faith and had a reasonable basis. For example, a party cannot avoid costs consequences for rejecting a reasonable settlement by simply claiming that their decision was made in good faith. The mere fact that a settlement offer was rejected may triggers cost consequences regardless of the reasons. Again, this is because the different priorities associated with costs (indemnification and fair, efficient proceedings) compel a different response than that which might arise in professional misconduct proceedings. Similarly, actions deemed sufficiently uncivil may attract consequences without having to delve further into the factors that may ground a finding of professional misconduct against a lawyer. Again, this is because uncivil behaviour (like, for example, causing unnecessary delay or failing to comply with a Court Order) is driven by factors and priorities (e.g. indemnification and encouraging fair, efficient proceedings) that dominate matters of professional ethics.

[61] That said and subject to my comments below, admissible evidence that is relevant to the assessment of civility may include an assessment as to whether the impugned acts were taken in good faith and had a reasonable basis. The point is that they are not necessarily determinative. Rather, they may be factors which are taken into account having regard to the Court's general discretion to fashion a just costs award along – along with those other relevant circumstances and considerations which guide the assessment of costs.

[62] I have reviewed the cases cited by Fraser on these issues. Respectfully, they are distinguishable and certainly do not conflict with these basic conclusions.[13]

Civility in the Context of Costs and Filtering Evidence Relevant to that Issue

[63] The issue at this preliminary stage is whether the impugned evidence is relevant and admissible. It would be inappropriate to make any final determination as to whether Fraser's actions were civil or uncivil. Or what effect any such actions have on costs. These reasons should not be misinterpreted as having done so. Any such findings and their impact on costs will only be made after all of the evidence (including any affidavits from Fraser) has been filed and after the parties have made their submissions.

[64] Evidence is only relevant (and, by definition, material) if it is tethered to the governing law. Therefore, to determine whether the impugned evidence is relevant to the issue of incivility, it is necessary to develop a conceptual framework for assessing how the notion of civility interacts with the law around costs.

[65] Returning to first principles, evidence is relevant to the issue of costs if it renders probable a fact that engages the complementary objectives which inform and guide an award of costs:

1. Indemnification for expenses reasonably associated with the conduct of litigation; and
2. Ensuring that parties approach litigation in a fair, responsible, and efficient manner.

[13] In *Mazac v. Muise*, 2025 NSSC 23, Norton, J. found that minor procedural breaches (e.g., late filings) did not amount to improper conduct warranting enhanced costs. However, this does not mean all relevant conduct must occur strictly within formal litigation procedures. In *Sonapay Inc. v. Wilson*, 2020 NSSC 375, the issue related to the impact of a discontinuance on costs. Brothers, J. held that enhanced costs are not warranted where proceedings are discontinued before trial. She rejected the idea that such discontinuance equates to frivolous litigation, emphasizing fairness and discouraging penalties for choosing settlement. In *Richards v. Richard*, 2013 NSSC 269, Muise, J. did not address admissibility of extraneous conduct. He simply deferred cost assessment to the main application, noting that discovery in an interlocutory motion would streamline future proceedings. In *Armoyan*, the Nova Scotia Court of Appeal confirmed broad discretion on costs but found error in awarding costs based on Florida proceedings beyond the trial judge's proper context and jurisdiction. The case did not address private litigant interactions. In *Pittston v. Murnaghan*, 2013 NSSC 23, Duncan, J. (as he then was) simply ruled that unproven or post-contempt conduct could not justify additional costs. Costs must relate to conduct that occurred during and impacted the litigation in question, not afterward. Finally, in an oral ruling from October 18, 2024, Lynch, J. declined to impose terms policing private party interactions, distinguishing court dealings from personal exchanges. Regardless, this was not a ruling on admissibility of such evidence in cost assessments. The concept of horizontal stare decisis is inapplicable and not binding.

[66] Civility is clearly an issue that engages these objectives subject to the additional constrains identified in para. 37 (e.g. pre-litigation and post-litigation conduct have no bearing on costs).

[67] In this case, MacIntosh-Wiseman's arguments around incivility are not based on Fraser's Statement of Claim or the allegations of defamation contained in that Statement of Claim. There may be circumstances where the mere allegations contained in the Statement of Claim are sufficiently serious or scandalous as to created concerns around civility. This is not one of them.

[68] This is important because it reinforces another important point: the claims made in the Statement of Claim have been summarily dismissed. Arguments around cost should not be used a vehicle to resurrect the defamation claim or re-litigate whether the defamation claim was well founded in the first place.

[69] While MacIntosh-Wiseman disputes the allegations of defamation made in the Statement of Claim, her allegations of incivility (and her related claim for enhanced costs) are grounded in complaints around how, or the manner by which, Fraser pursued those allegations once the claim was launched.

[70] The following lines of inquiry may assist in considering whether the impugned evidence is relevant to the issue of civility:

1. What was said or done (Content)?

2. How it was said or done (Context)?

3. Why it was said or done (Purpose)?

[71] Before elaborating upon each separate question below, the following preliminary comments are germane:

1. The lines of inquiry listed above are not a check list which judges must rigorously apply with unwavering dedication. The Court's general discretion regarding costs should not be so unduly constrained; and
2. The evidence which may bear upon these lines of inquiry cannot be easily separated and sealed within distinct analytical containers. These lines of inquiry are interrelated; and the answers they prompt may converge or overlap. Ultimately, a judge retains the discretion to consider all of these issues as a whole and assign weight accordingly.

However, for the reasons discussed below, these lines of inquiry may provide a useful analytical framework to help focus the issues.

Question 1: What was said or done (Content)?

[72] This question examines whether the actual nature or content of the impugned evidence obviously fall within the range of behaviour (words or acts) that could reasonably be considered uncivil - again bearing in mind the objectives which animate a costs award (indemnification and encouraging fair and efficient proceedings). Related questions include the extent to which the impugned evidence is related to the litigation. Even if related to the litigation, it may be relevant if impugned behaviour sparks a discussion around interpretation (i.e. whether the evidence should be interpreted as appropriate in the circumstances or, alternatively, unnecessarily offensive or needlessly insulting). Physical confrontation or threatening language may be more easily viewed as relevant to costs than, for example, candid remarks that may lack the decorum expected of litigants and potentially fall below the standard of civility.

Question 2: How it was said or done (Context)?

[73] The surrounding circumstances or context within which the impugned act occurred may be relevant to the issue of civility. Some related factors may include:

1. Whether the impugned behaviour was disproportionately harsh or exceedingly offensive given the surrounding circumstances;
2. Whether the litigant alleging incivility reasonably bears some responsibility for provoking or inciting the impugned acts; and
3. Whether the timing and frequency of the impugned evidence reveals a pattern of conduct. Arguments regarding the relevance of the impugned evidence may weaken if the underlying interaction was a fleeting, one-time occurrence. Conversely, arguments regarding the relevance of the impugned evidence may strengthen if one litigant repeatedly seeks out or exploits opportunities to engage.

Question 3: Why it was said or done (Purpose)?

[74] There are many reasons why litigants may interact with one another, directly or indirectly. Some have nothing to do with litigation costs or the civility in the

litigation process. As indicated, the demands of civility in the litigation process (and the related impact on costs) do not extend to every interaction which may involve litigants. Litigants may do business together or live near one another or share a personal connection which necessitates ongoing communication. Litigants may have common friends or share some form of social connection such that they only engage with one another indirectly.

[75] The reasons for (or purpose behind) the impugned evidence may help inform whether the evidence is relevant to the issue of civility for the purpose of assessing litigation costs. Relevance fades where the purpose for the impugned interaction cannot be reasonably linked to the conduct of the litigation or the duel objectives of a cost award. By contrast, the relevance of this evidence is magnified if there is a more discernible connection with the litigation and objectives which animate a cost award.

[76] Some of the factors which may clarify whether the underlying purpose of impugned evidence is relevant to costs include:

1. Whether the litigant accused of incivility engaged with another litigant during an event or proceeding which is tied to the litigation or otherwise contemplated by the *Civil Procedure Rules* . If so, the relevance to costs may be apparent. Complications arise if the litigants engaged outside the litigation process. This is a significant concern raise by Fraser and is addressed separately below;
2. Whether the litigants' relationship is defined or dominated by the litigation. The relevance of the impugned evidence to costs may be diminished if there are alternate reasonable or more benign explanations for the litigants' interaction which are unrelated to the litigation;
3. Whether the reason for the impugned evidence involves a direct interaction between the litigants themselves. The relevance of the impugned evidence to costs may become more elusive if it arises out of other relationships or connections which are detached from the litigation and the priorities which motivate costs; and
4. Whether the impugned evidence itself reasonably admits of an alternate purpose which renders the information less meaningful to the issue of costs.

[77] With respect to this line of inquiry, considerations around whether the impugned acts were taken in good faith or had a reasonable basis may also become relevant although, again, they are not determinative. I refer to my comments in paras. 50 - 62 above.

Incivility in the Circumstances Not Contemplated Under the *Civil Procedure Rules*

[78] Many of Fraser's objections contend that extraneous or personal interactions are irrelevant to the issue of civility and costs – even if they might objectively be viewed as offensive. The following extracts from Fraser's submissions illustrate his position:

> That the Defendant may feel disrespected around issues with a complaint with the Nova Scotia Barristers' Society to be filed against her or in other litigation in connection with other behaviour she scandalously engaged in and which came to light more recently than what was underlying this action, or interactions which did not involve her in other litigation she has had no involvement in, or if I choose to cast an aspersion at her when we might pass on the street or (resorting to a more extreme hypothetical) if I chose to pay a gaggle of teenagers to "egg" her house on Halloween while I stand in the curb and watch – none of that is in any way relevant to cost considerations.
>
> (Plaintiff's submissions at para. 12).

Or

> … it is a basic fundamental principle that costs assessment needs to focus on conduct in respect of the litigation or hearing in issue and not extraneous and certainly not unrelated dealings between the parties as the Defendant erroneously attempts to fixate on. That the Court does not properly consider the latter, renders evidence going to such extraneous topics completely irrelevant for the issue of assessment of costs.
>
> (Plaintiff's submissions at para. 22).

[79] Indeed, Fraser readily admits he despises MacIntosh-Wiseman and her father, Bruce MacIntosh, K.C. His submissions in this motion are filled with excoriating criticisms of these individuals, among others. However, he insists that many of the interactions which reveal his disdain are irrelevant because they occurred outside the confines of an identifiable part of the litigation process. The following examples from Fraser's submissions capture both the extent of Fraser's antipathy but also his

contention that the underlying evidence is ultimately extraneous and irrelevant, in any event.

[80] As to MacIntosh-Wiseman:

> There is no quarrel that there is nothing but disdain and disrespect that I hold toward Sarah MacIntosh-Wiseman (all warranted) as she has demonstrated herself to be a creature that is the antithesis of anything I value as positive character or which I would ever respect or which warrants respect – lazy, lacking in diligence, lacking in insight, lacking in work ethic, lacking in willingness to assume responsibility and even more troubling lacking in ethics integrity and honesty. Her behaviours even in this proceeding have shown an escalation or demonstration of her lack of integrity and ethics (including even now swearing to false information), as well as incompetence. She has an enemy in me until the day one of or the other of us dies. But those are not issues that are any business of the Court. Such a dynamic is simply reality given how she has behaved – including in ways that are not before the Court in this litigation. That dynamic and any manifestation of it has absolutely nothing to do with the cost assessment, no matter how much Sarah MacIntosh-Wiseman may rant, rave, whine or complain with elevated language or hyperbole and misplaced rhetoric and advance her own insight lacking perspective. Nor is the fact that she has live behind lie for most of her adult life and has had "a light" shone on some of that in any way relevant to cost considerations. She would likely prefer to have that lie maintained – Your Lordship could see that even from her requests before the written decision was published. But in the bigger picture, she needs to gain some insight and accept her reality, including the adversity that exists with me, and most certainly not be deluded into thinking it proper to transmute such matters into considerations around costs on a discrete piece of litigation. She should not have tried to burden this Honourable Court with submissions and would-be evidence of the nature she did, which completely overlooks what cost considerations are both in terms of considering level of compensation connected with actual litigation, versus it seems to her mind wanting to mete out some unwarranted level of punitive measure in connection with any manner of gripe, grievance or disgruntlement she holds even in respect of maters not involving her.
>
> (Plaintiff's submissions at para. 5).

> It is no secret that I despise Sarah MacIntosh-Wiseman and certain of her family. I have good reason for that. They are deplorable people, on a multitude of levels, who I am ashamed to have ever been associated with, and to have lulled myself into overlooking their faults due to the false impression that developed of their loyalty to me and support of me. That should not have influenced me to excuse their behaviours, but it unfortunately did. Hind-sight is 20-20. I will and do speak negatively of Sarah MacIntosh-Wiseman at any juncture there is an opportunity to do so and I am entitled to do that – that would include speaking negatively about her poor personal attributes and characteristics, her lack of professional competency, or lack of ethics, the delusional and insight lacking nature of her as

> well as certain of her family members and anything else I see fit, including even her obesity if I wish. Such interactions in unrelated dealings are all irrelevant to issues of costs in this proceeding. She can sue me if she wants to try to allege defamation over things I have expressed in other dealings and I am more than content to put the truth of anything I say to the test as a justification defence. She will not do that, because she knows everything I assert is true. **None of that, however, would be of any relevance to cost considerations in this litigation.** If I wish to swear at her or call her a liar, or an integrity lacking failure of a lawyer, or even obese when I pass her in the street or if I see her at a function or in church for that matter, I am entitled to do so, with such matters being completely **irrelevant** cost considerations in this proceeding.
>
> (Plaintiff's submissions at para. 49(d), emphasis in submission).

[81] As to Bruce MacIntosh:

> There has never been anything inaccurate ever asserted about the disgracefully dishonest, unethical, incompetent, mentally deteriorated and pill-popping Bruce MacIntosh (all descriptors supported by evidence, including his own admissions and a bottle of his own pills). But this is all irrelevant to this proceeding.
>
> (Plaintiff's submissions at para. 67).

[82] At para. 107 of the Plaintiff's submissions, Fraser further states:

> … all related to dealings with Bruce MacIntosh and ever escalating offensive incompetent and ostensibly mentally impaired behaviour in his advancing scandalous falsehoods and ravings (offensive ones at that). **The dealings had absolutely nothing to do with the litigation involving the Defendant, which she fails to disclose.**
>
> (Emphasis in submissions).
>
> What the exchanges actually involved was an instance of mind-boggling, and as farcical as it was, inappropriate misconduct by Bruce MacIntosh amounting to his effectively harassing and stalking me, with an original email essentially telling him to "knock it off" and to do not continue with his inappropriate behaviour, followed by more inappropriate misguided false statements by Bruce MacIntosh in reply (not disclosed by the Defendant) then a much lengthier email providing absolute clarity that he was to cease his harassing, stalking and skulking behaviours as they will not be tolerated and will be addressed if they continued. This issue relating to the insanity and harassing behaviours of Bruce MacIntosh has nothing to do with this litigation or any litigation. Others were copied on the emails, to ensure that they are aware of what was going on with Bruce MacIntosh, what he was doing as well as what will happen if he kept up and continued what would amount to criminal behaviour if he dared repeat it. I am entirely entitled to do that and it should not even be raised in the context of this legal proceeding. I included family members

> of Bruce MacIntosh in the hope that even if Bruce MacIntosh's brain was impaired, on top of his lack of ethics, someone might have sense enough to rein him in or in some manner deal with him, whether that be through words to persuade him to behave differently, or seeing him stuck in a home or subject psychological assessment or whatever else might be necessary to end his improper behaviours. All of that will need to be flushed out in more detailed response evidence if the subject affidavit content is not struck.
>
> (Plaintiff's submissions at para. 128).

[83] I agree that not every passing exchange between litigants becomes relevant to the issue of civility and costs simply because it occurred when litigation was ongoing and might be viewed as discourteous or disrespectful. Moreover, there is no doubt that actions which occur as part of a step contemplated by the Rules of Civil Procedure are more easily folded into any discussion around costs. At the same time, it would be overly restrictive to suggest that the only type of behaviour that impacts the conduct of litigation and could have costs consequences is that which can be inextricably tied to a formal component of the litigation process.

[84] Interactions outside the formal litigation process may affect the Court's assessment of costs. However, the Court must approach this type of evidence with caution. In my view, the same lines of inquiry identified in paragraphs 63 - 71 above apply; however, if the alleged incivility occurred in circumstances not contemplated by the *Civil Procedure Rules*, the evidence must be more carefully examined and scrutinized. There must be a clear and compelling connection between the impugned evidence and the twin goals that motivate a costs award (indemnification and promoting fair and efficient legal proceedings). Otherwise, allegations of incivility in the context of a costs assessment would invite an aimless, sprawling excavation of every interaction, regardless of its relevance to costs – rendering the process little more than a wasteful, voyeuristic distraction.

Hearsay

[85] I reviewed and relied upon the decisions in *McDonald v. Hue*, 2024 NSSC 24, at paragraphs 33 – 37; *Colbourne Chrysler Dodge Ram Limited v. MacDonald*, 2023 NSSC 309, at paragraphs 40 – 43. I also refer to *Rona Inc. v. Rockhard Construction Limited,* 2025 NSSC 282, where I synthesized the main principles as follows:

> Hearsay evidence is defined as an out-of-court statement tendered for the truth of its contents without providing the opposing party an opportunity to cross-examine the declarant in Court. It is presumptively inadmissible due to its inherent unreliability, with the inability to test the declarant's credibility in cross-

examination being a critical concern (*R v. Bradshaw*, 2017 SCC 35, and *R v. Khelawon*, [2006] 2 S.C.R. 787, ("***Khelawon***")).

[86] There are exceptions which may permit the introduction of otherwise inadmissible hearsay evidence. At paras. 32 – 36 of *McKinnon Estate v. Cadegan*, 2021 NSCA 79, the Nova Scotia Court of Appeal built upon *Kelowan* by providing a sequential, analytical framework for determining whether any such exceptions apply. I distill the analytical framework as follows:

1. **Traditional Exceptions Remain Valid**: If the evidence fits within a traditional common law exception (e.g., business records, dying declarations), it is presumptively admissible. However, even if a common law exception applied, it may still be excluded if either of the following two exceptions apply:
    a. In "rare cases" if the evidence lacks sufficient indices of necessity or reliability in the circumstances; or
    b. If not a "rare case", the Court retains its residual discretion to exclude evidence where its prejudicial effect exceeds its probative value.
2. **Principled Approach:** If the evidence does not fall within a traditional exception, it may still be admitted if the proponent establishes:
    a. **Necessity**: The declarant is unavailable or the evidence is otherwise essential; and
    b. **Threshold Reliability:** The circumstances surrounding the statement must provide sufficient guarantees of trustworthiness. Threshold reliability may be established through:
        i. Procedural safeguards or "procedural reliability" (e.g. statement made in circumstances where judge can test truth or accuracy of statement because adequate substitutes for in-court testimony); and/or
        ii. Substantive guarantees or "substantive reliability" (e.g. circumstances, including corroborative evidence, is sufficient to support the inherent trustworthiness of the evidence such that it would unlikely change under cross-examination). At paras. 47 -62 of *Charles*, the Supreme Court of Canada describes the process for assessing

> "substantive reliability", including the important role corroborative evidence plays in the analysis.

Speculation and Lay Opinion

[87] I read and rely upon the following passages summarizing the law surrounding this objection: *R v. Kotio*, 2021 NSCA 76, at para. 48; *McDonald v. Hue*, 2024 NSSC 24, at paragraphs 40 – 44; *Colbourne Chrysler Dodge Ram Limited v. MacDonald*, 2023 NSSC 309, at paragraphs 44 – 48; and *Rona Inc. v. Rockhard Construction Limited,* 2025 NSSC 282, at paras. 21 – 25.

[88] By way of brief summary, witnesses are not permitted to offer opinion evidence, because it involves drawing inferences from observed facts and it is the Court (not a witness) that is tasked with the authority and responsibility to draw appropriate inferences. Thus, generally speaking, witnesses may testify only to facts within their personal knowledge. Exceptions exist for expert opinion evidence and certain forms of lay witness opinion.

[89] Fraser's objections are based on the argument that MacIntosh-Wiseman's Affidavits include inadmissible lay opinion. Lay opinion is permitted when it is based on personal observation and ordinary experience without requiring specialized knowledge. It often involves "compendious statements" — summaries of complex or subtle factual observations that cannot be effectively detailed otherwise (*R. v. Graat*, [1982] 2 S.C.R. 819)).

[90] Focussing on the issue of civility, in my view, lay opinion is not automatically excluded and may be permissible depending on the circumstances. My reasons include:

1. The notion of civility incorporates concerns around how persons interact with one another - and the extent to which those interactions conform with acceptable modes of behaviour. These are experiences that form part of ordinary, everyday human experience. Courts do not require experts to help identify unnecessarily offensive, discourteous, or aggressive behaviour; and
2. All persons engaged in the litigation process (including lay persons and lawyers) are subject to the same standards of civility. At para. 31 of *Browne v. Cerasa*, 2018 ONSC 2242, ("***Browne***"), L.E. Fryer, J. enumerated certain principles which apply when assessing costs against self-represented litigants. She further found that the same standard of

> civility applies regardless of whether a lawyer or self-represented person is responsible for the alleged incivility. In *Browne*, L.E. Fryer, J. wrote: "Self-represented litigants may be held to the standards of civility expected of lawyers and a proper reprimand for failure to do so is an award of costs on a substantial indemnity basis" (at para. 31).[14] It would be both surprising and illogical to conclude that a self-represented layperson would be asked to behave in accordance with a certain standard of civility that is somehow beyond their ordinary experience and cannot be fully appreciated without some form of specialized training or experience.

[91] The following additional principles constrain the scope of admissible lay opinion:

1. Lay opinions must be based on firsthand experience, help clarify subtle facts (e.g., identifying handwriting, emotional states, estimating speed), and be offered by a witness better positioned than the fact-finder to infer meaning. They represent a concise way to effectively communicate or express conclusions that may contain a series of otherwise complex or subtle observations in normal human experience.
2. Again, when considering admissibility, the courts retain the residual discretion to weigh the probative value of any lay opinion and against prejudicial effect.

[92] Ultimately, the Court seek to avoid opinions that risk confusion, that speculate, or that intrude on the fact-finder's role by making legal conclusions. Judges act as gatekeepers to maintain fairness and clarity, ensuring opinions remain within appropriate bounds.

Argument or Submission

[93] Rule 39.04(2) clearly states that "A judge must strike a part of an affidavit containing …(a) information that is not admissible, such as an irrelevant statement or a submission or plea"

[14] *Browne* has been previously cited and relied upon in multiple jurisdictions including Nova Scotia (*LN v. RH*, 2020 NSSC 110) and, more recently, by the Ontario Cout of Appeal in *Hendriks v. Hendricks*, 2025 ONCA 453).

[94] In *Canadian Imperial Bank of Commerce v. CNH Capital Ltd.*, 2013 NSCA 35, the Nova Scotia Court of Appeal defined a submission or argument as "…a conclusory statement that embodies or assumes a point of law" (at para. 82).

Miscellaneous

[95] To avoid needless repetition in the attached schedules, the following three comments apply generally to Fraser's objections regarding admissibility:

1. Respectfully, evidence that is relevant and otherwise admissible, is not excluded based solely on the assertion that it might trigger a capacious response or that the Court might be burdened by that response – assuming the responding evidence is relevant and admissible, of course;
2. As indicated, Fraser's written submissions includes commentary that:
    a. MacIntosh-Wiseman's evidence is "delusional"; "crazy" or "raving"; "false" and/or "misleading" – or words to similar effect;
    b. MacIntosh-Wiseman's personally, Bruce MacIntosh, K.C., Mr. MacIntosh's wife (MacIntosh-Wiseman's mother) Sue MacIntosh, and MacIntosh-Wiseman's legal counsel including Brian Casey, K.C. of Boyne Clarke, Peter Rogers, K.C. and Raylene Langor of McInnes Cooper, and McInnes Cooper have exhibited negative traits characterized in highly critical terms.[15]

[15] For example, Fraser's written submissions describe:

1. Bruce MacIntosh, K.C. as, among other things, "disgracefully dishonest, unethical, incompetent, mentally deteriorated and pill-popping Bruce MacIntosh" (Fraser's written submissions at para. 67) or "deceitful and cognitively addled" (Fraser's written submissions at para. 111;
2. Sue MacIntosh as a "submissive, pandering and simpleton wife" (Fraser's written submissions at para. 132);
3. Brian Casey, K.C. as having "…committed misconduct" (Fraser's written submissions at para. 62);
4. Peter Rogers, K.C. as "…a lawyer of poor regard, known to be arrogant and prone to questionable behaviours, among other things. He has proven himself to engage in unethical behaviour and to amass unethically excessive billings. (Fraser's written submissions at para. 190);
5. Raylene Langor as having committed "…unethical as well as professionally incompetent behaviour" (Fraser's written submission at para. 201);
6. McInnes Cooper as a firm with a "regular practice in unproductively handling files and its unethical billing standards, with bills resulting which are completely divorced from level of value delivered on a file and which in fact represent scandalous unethical amounts charged to clients." (Fraser's written submissions at para. 200)

> I note that Fraser's criticisms are enveloped within his primary and more general submission that this evidence is irrelevant in any event. I address those issues in the attached Schedules. Where a more specific comment is required, it is included in the attached Schedules. Regardless, it would be premature and wrong to condemn or diminish evidence as irrelevant or inadmissible based on one party's assertions. Subject to the comments in these reasons and the attached Schedules, Fraser is at liberty to pursue these arguments. The extent to which any such evidence or arguments impact on costs (either decreasing or increasing costs) can be addressed as part of this process.
>
> It would also be similarly premature to comment on whatever evidence or arguments Fraser might present before actually seeing it. Fraser should be given the opportunity to present responding admissible evidence and argument. These reasons should not be interpreted as having pre-judged any evidence.

CONCLUSION

[96] As indicated, the attached Schedules "B" (MacIntosh-Wiseman Affidavit) and "C" (Rogers Affidavit) identifies each objection individually and applies the law accordingly.

[97] In reviewing the reasons contained in Scheduled "B" and "C", I repeat and emphasize that the concept of relevance examines whether the impugned evidence could reasonably make the existence of a material fact more probable or not. In conducting that examination, it is often necessary to consider the purpose of the impugned evidence by connecting it with material facts that may potentially engage the principles unpinning an award of costs (e.g. indemnification or encouraging fair, efficient proceedings). To the extent this is necessary, the reasons contained in Schedules "B" and "C" should not be misinterpreted as having made any final findings of fact. That task is for a date in the future, after all of the admissible evidence and arguments have been presented.

[98] For clarity and emphasis, all of the reasons in Schedules "B" and "C" are subject to the following qualifications:

1. Fraser has yet to file complete responding affidavits, having regard to the determinations regarding admissibility herein;

2. I do not have all relevant evidence before me. I have not (and cannot):
    a. Assign weight; or
    b. Make any determinations of fact until all the admissible evidence relevant to costs has been presented;
3. The Court ultimately retains the general discretion to make a just cost award having regard to all the evidence and related legal arguments.

[99] Because the Defendants' Affidavits are impacted by this decision, I ask that MacIntosh-Wiseman prepare the initial draft of the Order reflecting the decisions confirmed in Schedules "B" and "C". To avoid any confusion, a revised copy of the revised Defendant's Affidavits containing the necessary redactions should be attached to the Order. The parties shall otherwise follow *Civil Procedure Rule 78.04(3)* for finalizing the operative terms of this Order.

[100] Finally, I do not require submissions as to the costs associated with this motion at this time. Any claim for costs in respect of this motion may be advanced as part of the broader costs arguments made in connection with MacIntosh-Wiseman's motion for summary judgment.

Keith, J.

Schedule "A"

From: sarah_jenn@hotmail.com
Sent: March 9, 2021 9:10 PM
To: dfraser@macmacmac.ns.ca
Subject: Personal & Confidential

Donn,

Please note that I am sending this email from my personal account to keep it private, but I do not intend to engage in this discussion further. I wanted to acknowledge your recent invitation for a beer, and to explain to you why I am going to decline.

I have recently learned that you told/implied to my former partners: 1) that you know my long term career intentions, and have for some time; 2) that we are on close social terms; and 3) that I backed away from managing partner duties in 2018 for reasons that were related to Julie. [In case you are wondering, no email exchanges have been provided to me, but the narrow fact that you made those communications to the partnership was shared with me.] Donn, none of those messages are accurate or truthful. Regardless, you have no right to speak on my behalf or to hold yourself out as knowing my mind.

When you asked me to meet for a beer in the Fall, I explained my preference to let bygones be bygones. Not because I had any change of perspective on your emails from March/April 2019, but because I did not see any value in discussing the matter. I still consider your emails to have been one of the most unkind, uncollegial, unprofessional and inaccurate exchanges I have ever had with anyone, let alone someone I had considered a friend and partner.

Let me be clear. The emails you sent at midnight the night before I started my partnership-supported leave were directly responsible for the fact that I walked away from not only a law practice that I loved and excelled at, but a partnership and firm that I considered family. The partnership and firm that my grandfather started; my father then led; and which I intended to practice with for the remainder of my career (excepting only my intended temporary two year leave). Your angry, late night email started the snowball rolling through which my partnership and planned future disappeared almost overnight. While I could have turned back to address the issue with you to its conclusion, I knew that the partnership had enough on its plate in dealing with the news of Gerald's health. His situation gave me enough perspective to realize the right thing to do was to walk quietly away and let the partnership deal with that more important issue.

When you eventually reached out to speak with me around Christmas, almost two years later, the time for an apology had long since passed.
That said, as a courtesy to you, and out of respect for what I had considered to be a long standing relationship of mutual respect, I agreed to meet. I do not wish to hold you any ill will. To the contrary, I have considered it a personal and professional loss that our relationship ended as it had. I had always held you and your opinion in high regard. I accepted your apology in January, notwithstanding the fact that you carefully apologized only for the timing of your emails, not the content.

I now understand that you used that one courtesy meeting as a basis to suggest to my former partners that I have confided my long term career intentions to you. Donn, I want to be crystal clear - you do not have any right to speak on my behalf, nor to leave an impression that you know my mind. When you asked about my plans, I gave you polite and evasive responses, as I had no desire to have a real discussion about my future plans with you. Nor did I see value in being blunt about the fact that I would never rejoin a partnership with you, given the disrespectful way you treated me.

I have no idea what conversation you are referencing regarding my decision to step back from managing partner duties, but I can assure you that I discussed every aspect of that decision openly with Julie at the time, and in no way do I attribute my decision to anything negative related to Julie. Julie and I have remained in contact and friends through that period, and to this day. We do not always share a common approach to issues, but we have always been able to discuss any differences openly, and respectfully.

While I do not know the details of what is occurring at the firm, I do know that things are complicated. But since you have reached out to ask to meet for another drink, I thought it best that I tell you that I know you have misrepresented our earlier discussions. I have no interest in debating my perspective with you, nor in holding grudges or ill will. Whatever is happening with the partnership in 2021 is not something that involves me. But I will not permit you to reference me in conversations that I am not part of, nor to give others the impression that you are informed to speak about my thoughts/plans, past or present.

Donn, my statements that I hope you and Heather are well and that I miss the MMM crew were genuine. But I do not appreciate being used for strategic convenience in matters that are not related to me, nor in having anyone else purport to speak on my behalf. I am not sharing this email with the partnership, just as I had not communicated with them about our earlier meetings.

Sarah

Schedule "B" **MacIntosh-Wiseman Affidavit**		
Para.	Impugned Words/Statements	Decision
3	"I am a lawyer who was called to the Nova Scotia Bar in 2005. In my first few years of private practice, I practised litigation and family law. By approximately 2010, if not earlier, I shifted my focus to collective bargaining, labour and human resources law; maintaining only limited litigation work when another lawyer in the firm required secondary support on a large file. After 15	**Admissible.** This paragraph provides basic background information regarding MacIntosh-Wiseman's professional career and briefly frames the dispute without excessive embellishment and without seeking to re-litigate

	years as a practising lawyer, I switched to non-practicing status in 2020. I am a private consultant, serving as the Canada Director for a US based private philanthropic family foundation, The Shapiro Foundation."	substantive legal issues that have been determined. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged.
4 (first sentence)	"This Affidavit contains a limited amount of opinion evidence."	**Admissible.** This sentence confirms the affiant's recognition of an underlying concern regarding opinion evidence and alerts the Court to the presence of that evidence. It is neither opinion evidence nor an admission that all opinion evidence is inadmissible. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged. .
4 (second sentence)	"The Plaintiff communications to me in this matter extend well beyond communications necessary for the purpose of litigation."	**Inadmissible.** This statement is in the nature of a submission and includes a conclusory statement regarding the legal issue which is significant to the costs assessment.
4 (third sentence)	"Donn Fraser (hereinafter "Fraser") has consistently sent communications to me directly, and more publicly to those I know and do not know, commenting about my personal attributes and characteristics, my professional competency, my ethics, my family members and, most recently, my body."	**Partially Admissible.** This statement refers to types of communications made during the course of litigation regarding personal characteristics, professional and ethical competency, or family members and which, if proven and accepted by the Court, may ground findings of fact that engage the principles that inform costs (indemnification or encourage fair and efficient proceedings). This is subject to weight and

		the evidence/arguments presented by Fraser. However: 1. The final phrase "and, most recently, my body" refers to a communication made after my decision granting the Defendant summary judgment was released. It constitutes a post-decision communication that is not relevant to costs. See the reasons given under paras. 8(i), and paras. 70 – 71 below; 2. For emphasis, communications regarding professional or ethical competency during the pendency of the litigation are not admitted for the purpose of re-litigating these issues but, rather, for the more limited purpose of assessing their impact on the objectives which drive a costs assessment (indemnification and encouraging fair, efficient proceedings) There are otherwise no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged.
4 (fourth sentence)	"Some communications have included veiled or express threats of violence."	**Admissible.** This statement is relevant to costs, if proven and accepted by the Court and subject to weight and the evidence/arguments presented

		by Fraser. Veiled or express threats of violence against MacIntosh-Wiseman in the context of this litigation may ground findings of fact that engage the principles that inform costs (indemnification or encourage fair and efficient proceedings). However, this statement is largely a factual assertion and subject to weight – including a more detailed assessment of the specific corroborating evidence tendered in support of these veiled or express threats of violence. And, as well, the evidence/arguments presented by Fraser. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged.
4 (fifth sentence)	"I have felt intimidated, harassed and abused by Fraser's conduct and by these communications, which are well beyond the scope of what should be expected in the confines of litigation communications."	**Partially Admissible.** First half of the sentence is relevant and admissible to the costs assessment. Intimidation, harassment, or abuse may ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court and subject to weight and the evidence/arguments presented by Fraser. However, the second half of the sentence ("which are well beyond the scope of what should be expected in the confines of litigation communication" is struck as an inadmissible submission. The

		Court (not a party) is tasked with assessing the connection between the impugned communications and its effect on the conduct of the litigation.
4 (sixth sentence)	"I have included my opinion evidence only to the extent required to demonstrate to the Court the impact that Fraser's reprehensible conduct has had on me during this litigation."	**Partially Admissible.** The word "reprehensible" shall be struck. It describes a key factual and legal conclusion which is determinative when assessing solicitor and client costs. The balance of the sentence is otherwise relevant and admissible for the same reasons given under para. 4 (first sentence) in this Schedule "B", above.
6	"I knew Fraser personally and professionally for more than ten years, during my period of employment and then partnership within the law firm MacIntosh, MacDonnell & MacDonald ("Mac, Mac & Mac"). I never had a confrontational or concerning interaction with Fraser before the events giving rise to this litigation. Fraser and I were colleagues and law partners together until my departure from the firm in 2019. We had worked together collegially for more than a decade, during which time Fraser never, to my knowledge, criticized either my legal skillsets or contributions to the partnership."	**Partially Admissible.** The final phrase "during which time Fraser never, to my knowledge, criticized either my legal skillsets or contribution to the partnership" shall be struck. It does not impact the goals which inform costs assessments (indemnification or encouraging fair, efficient proceedings) but, instead, raises historical issues that seek to relitigate the issues in dispute (MacIntosh-Wiseman's skill and competence as a lawyer). It also unnecessarily expands the time period in question to more than 10 years in the past - before the key events that arise in the context of this dispute. The rest of this paragraph is relevant and admissible as background information and for the same reasons given for under para. 3 in this Schedule "B", above.

7	"I was advised by my former law partners, and do verily believe, that in 2021, more than two years after I had departed Mac, Mac & Mac and resigned from the partnership, the law firm dissolved. I was not part of the partnership discussions leading up to or the decision to dissolve the firm, nor did I endeavour to influence that decision."	**Admissible.** See the reasons given under para. 3 in this Schedule "B", above. This is merely background information that helps frame the dispute, subject to weight and the evidence/arguments presented by Fraser.
8a	"**Indisputable facts causing reasonable apprehension of Fraser's unpredictable, vindictive and explosive nature;"**	**Inadmissible.** This subparagraph shall be struck. The subsections in para. 8 are simply part of a list of headings for sections of evidence contained later in the affidavit. In this case, this heading corresponds with the heading preceding and evidence contained within para. 9 of the MacIntosh-Wiseman Affidavit. For reasons given below, I have struck para. 9 and the corresponding exhibits. Because the subsequent evidence given in support of this heading is inadmissible, the heading itself should also be struck. I note, however, that the concerns are primarily hearsay, although there is an indirect concern around relevance.
8b	"Fraser's **unprofessional and inappropriate attempts to interfere with my right to legal representation** in defending his claims against me;"	**Partially Admissible.** The subsections of para. 8 are part of a list of headings for corresponding sections of evidence contained later in the affidavit. The word "unprofessional" is inadmissible and shall be struck. It adds an unnecessary gloss with ethical implications that are not in issue.

		In addition, the prejudicial effect of this word otherwise outweighs any probative value. The information in this heading otherwise refers to Fraser's "attempts to interfere with my right to legal representation". The alleged interference may ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court and subject to weight as well as the evidence/arguments presented by Fraser. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged. The probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. All of this is subject to a more careful assessment of the corresponding evidence given in support of the asserted "direct communications" (see paras. 10 – 20 of the MacIntosh-Wiseman Affidavit), including any admissibility concerns related to that evidence.
8c	**"Fraser's demonstrated retaliatory and revengeful approach to me and my family;"**	**Admissible.** The subsections in para. 8 of the MacIntosh-Wiseman Affidavit are part of a list of headings for corresponding sections of evidence contained later in the affidavit. The information in this heading contains a compendious

		statement regarding "Fraser's demonstrated retaliatory and revengeful approach". It refers to the sort of lay opinion that is permitted in that it describes forms of actions which are part of ordinary, everyday human experience (retaliatory and revengeful). See paras. 72 - 77 of my reasons. The language in this heading is relevant, material, and admissible. These alleged traits may ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court and subject to weight as well as the evidence/arguments presented by Fraser. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged. The probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. However, these comments are subject to a more careful assessment of the evidence presented in support of the asserted "approach" (see paras. 21 – 25 of the MacIntosh-Wiseman Affidavit), – including any further admissibility concerns related to that evidence.
8d	**"Direct communications from Fraser** to me which reasonably caused me to have **concerns for the safety of myself and my family;"**	**Admissible.** The subsections of para. 8 are part of a list of headings for sections of evidence contained

		later in the affidavit. The information in this heading is relevant, material and admissible. Concerns around safety may be relevant and material to the issue of costs may ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court and subject to weight as well as the evidence/arguments presented by Fraser. There are no exceptions which would render the evidence inadmissible. The Court's residual discretion is not engaged. Probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. However, these comments are subject to a more careful assessment of the evidence presented in support of the asserted "conduct" and safety concerns (see paras. 26 - 51 of the MacIntosh-Wiseman Affidavit) – including any further admissibility concerns related to that evidence.
8e	"**Fraser's uncivil and unprofessional communications and refusals to comply with repeated requests to cease such communications and/or to direct such communications through legal counsel**;"	**Partially Admissible.** The subsections of para. 8 are simply part of a list of headings for sections of evidence contained later in the affidavit. The words "uncivil and professional" is inadmissible and shall be struck. The word "uncivil" is a summary or conclusory word summarizing an issue the Court is required

		to adjudicate upon. In addition, the prejudicial effect outweighs any probative value. The word "unprofessional" adds an unnecessary gloss with ethical implications that are not in issue. In addition, the prejudicial effect of this word otherwise outweighs any probative value. The information in this heading is otherwise relevant. An alleged refusal to communicate with legal counsel, if proven and accepted by the Court, may ground findings of fact that engage the principles that inform costs (indemnification or encourage fair and efficient proceedings) – subject to weight and the evidence/arguments presented by Fraser. The probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. However, these comments are subject to a more careful assessment of the evidence presented in support of the asserted "communications" and "refusals" (see paras. 26 - 51 of the MacIntosh-Wiseman Affidavit) – including any further admissibility concerns related to that evidence.
8f	"**Fraser's irrelevant, offensive and/or erroneous statements to the Court and to my family members** in the context of this litigation;"	**Partially Admissible.** The subsections of para. 8 are simply part of a list of headings for sections of evidence contained later in the affidavit. The word "irrelevant" shall be struck. It represents a conclusory statement of law or

		submission that the Court is required to adjudicate. The balance of the statement is relevant and material to the issue of costs. This information is relevant, material and admissible. The alleged "statements" to the Court and to family members, if proven and accepted by the Court, may impact the conduct of the litigation and engage the goals of a costs award (indemnification and encouraging fair and efficient proceedings) – subject to weight and the evidence/arguments presented by Fraser. The probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. However, these comments are subject to a more careful assessment of the evidence presented in support of the asserted "statement" (see paras. 52 - 62 of the MacIntosh-Wiseman Affidavit) – including any further admissibility concerns related to that evidence. Note that in the preamble to para. 52, the wording of this heading changes to read "Fraser's Allegations of Wrongful or Exaggerated Communications by Me to the Court", I address this issue below.
8g	"**My efforts to reduce costs and minimize the complexity** of this litigation;"	**Admissible.** The subsections of para. 8 are simply part of a list of headings for sections of evidence contained later in the affidavit.

		MacIntosh-Wiseman's efforts to reduce costs and minimize complexity are relevant - subject to a more careful assessment of the alleged "efforts" and including any admissibility concerns; and assigning weight as well as consideration of the evidence/ arguments presented by Fraser. The probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances. However, these comments are subject to a more careful assessment of the evidence presented in support of the asserted "statement" (paras. 63 – 66 of the MacIntosh-Wiseman Affidavit) – including any further admissibility concerns related to that evidence.
8h	"**Fraser's purposeful and unreasonable efforts to increase the complexity** of this litigation- and the correlating **increase in my associated legal costs;** and"	**Admissible**. The subsections of para. 8 are simply part of a list of headings for sections of evidence contained later in the affidavit. MacIntosh-Wiseman's efforts to reduce costs and minimize complexity are clearly relevant, material, and admissible - subject to a more careful assessment of the alleged "efforts" and including any admissibility concerns; and assigning weight as well as consideration of the arguments/evidence presented by Fraser. Probative value of this heading, by itself, otherwise exceeds any prejudicial effect in the circumstances.

		These comments are subject to an assessment of the evidence presented in support of the alleged "statement" (para. 67 of the MacIntosh-Wiseman Affidavit) – including any further admissibility concerns related to that evidence.
8i	"Fraser's **post Decision communications** to me."	**Inadmissible.** This heading shall be struck. Absent some exceptional circumstances which do not exist here, post-decisions communications have no reasonable bearing on the conduct of the litigation or engage the goals of a costs award (indemnification and encouraging fair and efficient proceedings). See para. 37(2) of the attached reasons. The paras. in the MacIntosh-Wiseman Affidavit which correspond to this heading (paras. 70 – 71) shall be struck together with the related exhibits. Note that paras. 68 – 69 in this Schedule "B" relate to pre-decision (not post-decision) communications and are addressed separately below. Finally, I note that these comments regarding post-decision communications were made in the context of an outstanding appeal proceeding. I make no determination as to the impact these communications may have on costs in the context of that ongoing appeal proceeding, if any.
9 heading	"**INDISPUTABLE FACTS CAUSING REASONABLE APPREHENSION**	**Inadmissible.**

	ABOUT FRASER'S UNPREDICTABLE, VINDICTIVE AND EXPLOSIVE NATURE"	This heading shall be struck for reasons given below in respect of paras. 9(a) – 9(c) of the MacIntosh-Wiseman Affidavit.
9 (Generally and Preamble, in particular)	"I have been acutely aware of the following incidents which are matters of public record, all of which relate to other individuals who have been engaged in litigation by Fraser, and all of which have caused me safety concerns for myself and my family as it relates to Fraser's conduct towards me in this litigation:"	**Inadmissible.** This statement shall be struck as the evidence it introduced is inadmissible for reasons given below regarding paras. 9(a) – 9(c) of the MacIntosh-Wiseman Affidavit.
9a	Fraser has pleaded guilty to assaulting one of my former law partners, resulting from an altercation which occurred in the Pictou Court House on February 1, 2024 (Copy of Probation Order appended hereto as **Exhibit "A");**"	**Inadmissible.** Para. 9(a) and Exhibit A shall be struck. The supporting evidence is an unsigned Probation Order dated October 22, 2024 - just prior to the release of my decision granting summary judgment to the Defendant and while that decision was under reserve. There is no evidence MacIntosh-Wiseman was aware of the incident in the Pictou Court House prior to this date. As such, the impact of this Order on the conduct of the litigation or the goals of a costs award (indemnification and encouraging fair and efficient proceedings) is minimal. The prejudicial effect of this evidence outweighs any probative value.
9b	"Fraser was tasered by RCMP officers following a call to his personal residence, as described in pleadings filed in Fraser's lawsuit against the RCMP (See Amended Notice of Action and Notice of Defence in Pic. No. 517720 attached hereto as **Exhibits "B"** and "**C**" respectively);"	**Inadmissible.** This subparagraph and Exhibits "B" and "C" referenced therein shall be struck. The Statement of Claim filed by Fraser (Exhibit "B") is of minimal probative value. Moreover, pleadings contain allegations of material

		fact. The Rules expressly state that pleadings are not to include evidence. In all events, MacIntosh-Wiseman seeks to introduce this Statement of Claim primarily to introduce the responding allegations contained in the Statement of Defence (Exhibit "C"). Those allegations were authored by legal counsel for the Defendants in that action and are double hearsay being presented, in my view, for their truth (i.e. that Fraser is unpredictable and explosive). The MacIntosh-Wiseman Affidavit suggests that these pleadings are merely to establish Fraser's nature caused a fear or reasonable apprehension for her safety which, in turn, impacted her responses during the course of the litigation. However, the evidence to reinforce that fear or apprehension is sparse. Among other things, in the preamble to paragraph 9, the Defendant states that she has been "acutely aware" of this incident without providing detail as to when or how she became aware. These pleadings do not fall under any traditional categorical exceptions for hearsay. As to the principled exceptions, there is no necessity and no guarantee of either procedural or substantive reliability. In all events, the prejudicial effect far outweighs any probative value.

9c	"Fraser pled guilty to two counts of resisting or willfully obstructing a public officer (sheriffs) as noted in Exhibit "A" and as described in part by the Nova Scotia Court of Appeal in 2024 NSCA 94 at paras. 20, 21, 22, 71 and 72;"	**Inadmissible.** Para. 9(c) and Exhibit "A" referenced therein shall be struck largely for similar reasons to those given under para. 9(a) in this Schedule "B", above. I note that the corroborating evidence is information in the Order and, as well, a decision from the Court of Appeal 2024 NSCA 94 released November 26, 2024 – i.e. just prior to the release of my decision granting summary judgment to the Defendant and while that decision was under reserve. There is no evidence MacIntosh-Wiseman was aware of the incidents contained in this decision prior to this date. The impact of this Order on the conduct of the litigation or the goals of a costs award (indemnification and encouraging fair and efficient proceedings) is minimal. The prejudicial effect of this evidence outweighs any probative value.
11 and Exhibit "U" of the Supplementary Affidavit	"On April 13, 2023, shortly after this litigation commenced, I received an email from Fraser in which he copied lawyers Kelly MacMillan and her colleague, Sheree Conlon. Ms. MacMillan had been retained by the NSBS to undertake a Complaint investigation involving Fraser. I was not apprised of the details of the Complaint or investigation but consented to complying with NSBS requests for relevant information. The email thread attaches the March 2023 correspondence between Fraser and me that preceded his filing of the lawsuit against me, which Ms. MacMillan included in her NSBS Investigation. Fraser's email	**Admissible.** This exchange between Fraser and counsel for the NSBS relate to a different proceeding (a complaint against and related investigation into Fraser's conduct). MacIntosh-Wiseman concedes that she was unaware of the details regarding this NSBS. However, the statement in question suggests that Fraser may have been operating under the mistaken belief that MacIntosh-Wiseman was

	misunderstood Ms. MacMillan's role and, believing her to represent some combination of Bruce MacIntosh, KC, and/or myself, Fraser wrote: *". .. Please advise as to the scope of your retainer and who exactly you are acting for, pending my determining whether or not you will shortly be personally named* a *co-defendant ... I also encourage you to have a candid conversation with your new partner, Sheree Conlon, about whether it advisable for you and your firm to sully yourselves with involvement in these matters ... Your smart move would be to step away from this shamelessly unethical group.'"*"	seeking to retain the legal counsel who was, in fact, acting for NSBS. Subject to weight, this more limited purpose is relevant to the issues of costs is that it relates to MacIntosh-Wiseman retaining counsel in this matter and, more specifically, the manner in which Fraser (even mistakenly) interacted with potential counsel for MacIntosh-Wiseman which, in turn, the objectives of indemnity and encouraging fair, efficient proceedings. The probative value exceeds any prejudicial impact.
12	"In **May 2023,** I retained Brian Casey, KC, to represent me in this matter. The initial retainer was joint with my father, Bruce MacIntosh, given that there were a number of common issues between the lawsuits that Fraser filed against the two of us. To avoid litigation complexity and due to the short duration of my retainer with Mr. Casey, I am not including his legal fees (of a few thousand dollars) in these cost submissions."	**Admissible.** This is an introductory statement providing basic background information MacIntosh-Wiseman and Mr. MacIntosh's initial decision to jointly retain Brian Casey, K.C This statement and the statements that follow in paras. 13 – 16 of the MacIntosh-Wiseman Affidavit are relevant to costs because they introduce legal counsel who briefly acted for MacIntosh-Wiseman in this action and to the contention that Fraser's actions impacted those issues that are relevant to costs (indemnity and encouraging fair, efficient proceedings) – as opposed to relitigating historical issues regarding the substantive causes of action. The probative value exceeds any prejudicial impact. These comments are subject to weight and an assessment of

		the evidence and arguments presented regarding Mr. Casey's involvement in the litigation – including any further admissibility concerns related to that evidence.
13	"On **May 2, 2023,** Fraser sent an email to my legal counsel, Mr. Casey, chastising him for agreeing to be retained by me and requesting Boyne Clarke cease representation. Fraser copied Boyne Clarke's managing partner and former managing partner on the message which stated, in part: *"...More generally, I* am *very* ***disappointed that you would involve your firm in such*** **matters,** ***against me and on behalf of such former practitioners*** *who have conducted themselves* so *poorly. ...I recognize that Jamie MacNeil is no longer your managing partner and I do not know Lauren Randall (beyond that Jamie, who I respect, speaks highly of her). However, I am copying them both here with the* ***request that your partnership reconsider whether to sully your firm through you acting against me for these former lawyers.*** *Your clients were inappropriately involved to varying degrees in the implosion of my former firm, acting in concert to varying degrees and with varying degrees of lack of ethics with former partners who have themselves been to varying degrees recognized by right minded end competent segments of the Nova Scotia bar and beyond* as *having behaved shamefully and unethically (especially following the release of the decision in 2002 NSPC 24). Many would wisely* not *wish to even be tainted by such association.* ***There is damage which you are going to cause in many different ways by acting against me and for these people.*** *I* ***suggest it should not be seen as worth it in the long run, all over*** **a** ***one-off retainer for people who have acted shamefully in the underlying dealings."*** **(Exhibit "D")**"	**Admissible.** See the reasons given under para. 12 of this Schedule "B", above.

14	"On **Thursday, May 18, 2023,** Tracy Smith - a colleague of Mr. Casey's who was assigned to handle my file and Bruce MacIntosh's during Mr. Casey's absence from the office - wrote to Fraser. In his response to Ms. Smith of the same date, Fraser again encouraged Boyne Clarke to cease representation of myself and Bruce MacIntosh, stating, in part: *"... I was extremely* ***disappointed that Mr. Casey and your firm would take on this matter and act against*** **me,** *particularly for the likes of the Defendants involved here. I would respectfully* ***encourage you personally to eschew involvement.*** *...I am not in a counsel position in this matter, but I am a party.* ***This is as personal as it gets,*** *and* ***acting against me will be treated as personal.*** *...As I expressed to Mr. Casey, in the course of prudent and experienced practice and disputes between lawyers,* ***there are some files that good and prudent lawyers just do not take on. ..."*** **(Exhibit "E")**"	**Admissible.** See the reasons given under para. 12 of this Schedule "B", above.
15	"Fraser continued his attack on my legal counsel for representing me, in his correspondence to Mr. Casey of **June 1, 2023,** stating: *"The pleadings you have put your name to are offensive and it has been* ***irresponsible for you to have alleged what you have without evidentiary basis, on behalf of the disgraceful parties you are acting for who themselves would lack competence to know the difference."*** **(Exhibit "F")**"	**Admissible.** See the reasons given under para. 12 of this Schedule "B", above.
16	"I am advised by my Father, Bruce MacIntosh, and do verily believe, that Fraser's Amended Statement of Claim against my Father subsequently included an amendment to add a personal claim against Brian Casey, KC, for legal costs. That plea was later struck by case management judge Justice Scott C. Norton."	**Admissible** The claim against Mr. MacIntosh is neither unrelated nor irrelevant simply because it is a separate action. As indicated in my reasons, Fraser chose to advance the same allegation of defamation against Mr. MacIntosh in that separate action as is being alleged in this action against

		MacIntosh-Wiseman. The two separate allegations of defamation arise out of the same facts and circumstances. The facts surrounding any allegation or suggestion that Mr. Casey may be added as a party in the action against Mr. MacIntosh are relevant. I refer to the reasons given under para. 12 of this Schedule "B", above. In this particular circumstance, the same concerns regarding Mr. Casey's retainer in the action against Mr. MacIntosh may bear upon the issues which drive costs in this action (indemnification and encouraging fair and efficient proceedings) particularly having regard to the connection between these two actions and that MacIntosh-Wiseman's evidence that she and Mr. MacIntosh jointly retained Mr. Casey.
17	"In June 2023, I decided that Fraser's uncivil, harassing and vitriolic attitude towards Bruce MacIntosh was adding unnecessary complexity to my legal representation, as Fraser's communications to Mr. Casey in relation to my Defence were consistently interwoven with comments about his lawsuit against Bruce MacIntosh. I subsequently decided to separate our joint retainer and terminated my retainer with Mr. Casey on amicable grounds."	**Partially Admissible** See the reasons given under para. 12 of this Schedule "B", above. The word "uncivil" shall be struck for the reasons given under para. 8(e) above.
18	"I was self-represented for a period of time after my termination of Mr. Casey's retainer, but ultimately determined that the persistent, insulting and aggressive nature of Fraser's communications required me to again hire legal counsel. Although	**Admissible** See the reasons given under paras. 12 and 17 of this Schedule "B", above. The statements regarding MacIntosh-Wiseman's decision to retain counsel

	technically capable of self-representation, I knew that I would be unable to carry on my full-time job and parenting duties, while simultaneously responding to the seemingly endless litigation tactics and communications of Fraser. As my new legal counsel, Peter Rogers, KC, will attest in his Affidavit, Fraser took an approach to this litigation which necessitated much more legal intervention and representation than should have been required in a Motion for Summary Judgment."	despite the fact that she was licensed as a lawyer (and "technically capable of self-representation") is not opinion. Rather, and subject to weight, it introduces evidence as to why MacIntosh-Wiseman decided to incur the costs associated with engaging McInnes Cooper and is thus relevant to the issues which drive a costs assessment (indemnification and encouraging fair, efficient proceedings). Respectfully, Fraser's further submission that this evidence is "just delusional, insight lacking banter from an incompetent, inexperienced and judgment lacking Defendant" does not capture the underlying rationale around relevance for the purposes of costs. I note that this evidence is also subject to an assessment of Mr. Roger's affidavit evidence.
19 and Exhibit G	"Copies of excerpts of Fraser's inappropriate communications to my legal counsel at McInnes Cooper are included at **Exhibit "G"** hereto. I am advised by Peter Rogers, KC, and do verily believe, that one of the first, but not last, inappropriate communications that Fraser sent to my newly retained legal counsel at McInnes Cooper stated, in part: *"Attached is s copy of the amended Statement of Claim, which I had sent in for filing before even being aware that your unethical client filed her offensive amended pleading with the falsehoods therein. I only received a copy back today. I do wish to speak to you on other points, but thought in prudent to have this in writing.* ***You are on fair notice here that if you sign your name***	**Admissible** Communications with counsel in the context of this litigation are relevant. The word "inappropriate" is a descriptor or gloss which is within the confines of admissible lay opinion. It does not suggest a legal conclusion. I note that Fraser accuses McInnes Cooper generally of having "bilked" MacIntosh-Wiseman; and of "shamefully exorbitant, unproductive and unethical billings"; and "grotesquely unethical billings"; and having a "regular practice in unproductively

	to a pleading with baseless allegations for which you have no evidentiary support (in breach of your own professional obligations) ... remedies will be pursued against you personally. *... at a minimum, you personably would be well advised to in particular remove from your client's pleading any assertions of or anything which would falsely imply anything I have pled has been for media and an abuse of process. Even your client knows there is not a shred of evidence of that and* ***I will hold you personally responsible along side her if you dare advance such accusations.*** *Understand as well that I* ***am interfacing as a party in this matter, and not as counsel for a party.*** *I* ***do not owe you and you client obligations counsel acting for a party owes an opposing cousinly or other parties.***"	handling files" and "unethical billing standards" (Fraser's submissions at paras. 79, 160, 177, and 200). He also accuses Peter Rogers, K.C. of McInnes Cooper and his colleague Raylene Langor of similar scandalous misconduct both in respect of billing and unprofessional or sharp practice. There are obviously very serious allegations. If proven and accepted by the Court, they would impact any costs assessment, subject to weight. Fraser is also entitled to raise these issues and present evidence in support of these allegations. Cost assessment engage the principle of indemnification and so allegations of excessive bills are relevant – particularly where MacIntosh-Wiseman claims solicitor and client or enhanced costs. Similarly, while this is an assessment of costs (not a professional misconduct hearing), problematic or sharp conduct by counsel may similarly engage the policy concerns surrounding costs. None of this seeks to relitigate the historic substantive issues in the claim.
20 and Exhibit "V" in the Supplementary Affidavit	"I am advised by my legal counsel, Raylene Langor, and do verily believe, that on **March 15, 2024,** she communicated with Mr. Fraser and received the following reply: *"Ms. Langor,* *Beyond addressing your emails below with this reply,* ***I will not be communicating with you further. My limited obligation to communicate through the Defendant's***	**Admissible.** See the reasons given under para. 19 of this Schedule "B", above. I also note Fraser raises a further issue regarding the Notice of New Counsel filed March 15, 2024 and the argument that he was entitled

	lawyer arises only by virtue of the Civil Procedure Rules, which unethical lawyers within your firm do not respect but rather breach with wild abandon. You personally have demonstrated you are a lawyer who will stoop to sharp practice and you have otherwise conducted yourself in uncommendable ways. In the face of such pervasive conduct, no one within your firm should expect the benefit of the Rules. However, you personally are not even counsel of record and there is no obligation to deal with you. *The funds satisfying the cost award have been provided to the Defendant, by delivery to her residence. A copy of the covering letter is attached.* ***There would be no circumstances where any money would ever flow through you or others with your firm, given the unethical behaviours that exhibited by those in your law firm.*** *I look to hear nothing further from you and* ***will not communicate with you further."***"	to refuse communications with Ms. Langor, in the circumstances. Fraser is entitled to address this issue with his own evidence and written submissions relevant to the issue of costs. However, this does not undermine the relevance and admissibility of the evidence in the first instance.
21 and Exhibit "W" in the Supplementary Affidavit	"I am advised by my legal counsel, Raylene Langor and Peter Rogers, KC, and do verily believe, that as a result of the above correspondence from Fraser, my counsel filed a Notice of New Counsel with the Court on **March 15, 2024,** formally adding Raylene Langor as counsel of record on my behalf. Following receipt of that Notice, Fraser replied to Peter Rogers, KC: ***"I still will not communicate with the likes of Ms. Langor.*** *That is not to you are any better, at least from an ethical perceptive. This move was simply farcical, as is any expectation that you and your client can benefit from the Rules while breaching them as you see fit."*"	**Admissible.** See the reasons given under paras. 19 and 20 of this Schedule "B", above.
22	"Fraser's refusal to communicate with Ms. Langor, both before and after her being formally added as counsel of record on my file, directly increased the legal fees incurred by me in this matter."	**Admissible.** See the reasons given under paras. 19 and 20 of this Schedule "B", above.

23 heading	"**FRASER'S DEMONSTRATED RETALIATORY AND VENGEFUL APPROACH TO ME AND MY FAMILY"**	**Admissible.** See the reasons given under para. 8(c) of this Schedule "B", above.
23 and Exhibit "H"	"The prospect of this litigation first came to my attention on **March 6, 2023,** (nearly four years after my departure from Mac, Mac & Mac), when I was surprised to receive an email from Fraser, advising that he intended to sue my Father (our fellow former law partner), and indicating that he also wanted to **hold me 'accountable'.** Fraser's email to me demonstrates that he was motivated by retaliation for the demise of the law firm (notwithstanding my lack of any involvement in that decision) rather than alleged damages caused by his claim of defamation. Fraser's email to me stated: *"You are relatively far down on the list of "fish to fry", but particularly given how your delusional comments were later used and abused by others to try to work harm, you are not skating away without* ***having been held accountable*** *to some degree.* ***This is not about the money. It is about you facing some accountability. A damage claim is, unfortunately, the only way I can mete out some accountability."*** **(Exhibit "H")**"	**Admissible.** This email was sent before Fraser filed his action. This is pre-litigation conduct which is generally inadmissible to the issue of costs. However, the email was sent only 4 days prior to the claim being filed on March 10, 2023. It contains information that speaks directly to the allegations contained in the claim filed a few days later. It also provides background information for a series of related communications that occurred shortly after the action was filed. Finally, it includes an offer to suspend the limitation period (which was about to expire) and thus provide time to discuss potential resolution. These are all more limited issues which bear upon a costs assessment (indemnity and encouraging fair, efficient proceedings) – without re-litigating the historic matters which were the subject matter of the action. Overall, in these circumstances, this exchange which began on the eve of litigation and continued after the claim was filed constitutes a rare exception to the general rule against introducing pre-litigation conduct in in a costs assessment.

24 and Exhibit I	"I replied to Fraser on March 14, 2023, after returning from an international work trip. In his subsequent reply to me of **March 15, 2023,** Fraser referenced me having been 'involved' in 2021 firm matters, and explicitly threatened to include in his lawsuits my husband (a member of the Nova Scotia bar), my sister (Leisa MacIntosh, also a member of the Nova Scotia bar), and my former paralegal, if he were able to obtain ***"any shred of evidence"*** that they **expressed *anything* negative** about him. **(Exhibit "I"**)"	**Admissible.** These are communications directly related to the action and are relevant to the issues of indemnity and encouraging fair, efficient proceedings – without being a prelude to re-litigating historic matters that were the subject matter of the action. Within these broader considerations, the allegations related to civility also arise. I repeat my comments on the issue of civility in para. 23 of this Schedule "B", above.
25	I was particularly concerned by the fact that Fraser's email suggested the threshold of 'evidence' he sought was an indication that those close to me expressed 'anything negative' as opposed to 'anything defamatory'. As a result of Fraser's email of March 15, 2023, including his explicit statement that my husband would *"quickly also find himself a Defendant in litigation"* if Fraser were to find *"any shred* of *evidence* of *his expressing anything negative concerning* [Fraser]", I asked my husband to resign from the Aberdeen Hospital Foundation Board, which he sat on with Fraser's wife, Heather MacDonald. Due to the fact that Fraser was suing me for defamation over what I considered to be a non-defamatory, honest and measured email, I told my husband it was too much of a personal risk for him to be in unregulated communication with Fraser's wife. I was subsequently advised by my husband. and do verily believe, that he immediately resigned from the Aberdeen Hospital Foundation Board in order to avoid the risk of Fraser baselessly interpreting any actions or comments as grounds for additional litigation."	**Partially admissible.** The final sentence in paragraph 25 shall be struck as inadmissible hearsay. The balance of the paragraph is admissible. I repeat the reasons given under 24 of this Schedule "B", above. I also note that this portion of the paragraph is directly related to this action. As to the final sentence of paragraph 25, it does not fall within any categorical exceptions for hearsay and there are no guarantees of procedural or substantive reliability. With respect to substantive reliability and among other things, there is no evidence as to timing (e.g. either when MacIntosh-Wiseman asked her husband to resign from the Board or when he actually did resign).
26	"Based on both Fraser's conduct and his communications over the past two years, in the context of what he has repeatedly	**Admissible.** This paragraph introduces the facts and exhibits referenced in

	described as highly personalized litigation ("as personal as it gets"), this litigation has caused me ever-escalating personal safety concerns, both for myself and for the safety of my immediate and extended family. On occasions when I cautioned Fraser that I was uncomfortable with his conduct and directed him not to attend my personal residence, he has used this litigation process as the justification for ignoring my directive and insisting that he had the right to attend at my residence as he '*sees fit'.* There have been multiple occasions when I have directed Fraser not to attend at my personal residence. either directly or through my legal counsel, all to no avail."	paragraphs 27 – 31. Respectfully, they do not contain submissions or conclusory statements of law. The information speaks to an effort to reduce direct engagement due to a concern around safety and efficiency. Within these broader considerations, this evidence may also bear upon the issue of civility. I repeat my comments on the issue of civility in para. 23 of this Schedule "B", above. If these allegations are proven and accepted by the Court, they are relevant and admissible in respect to those concerns which underpin costs (indemnification and encouraging fair, efficient proceedings) – subject to weight and the arguments/evidence Fraser presents.
27	"On **April 13, 2023,** after being made aware that Fraser had filed his claim against me in the Halifax Courts, but having not yet been served with the Statement of Claim, I emailed Fraser stating, *"Please arrange to have your process server contact me by phone ... and I will arrange* to meet *them* to *accept service. **I would ask that you not contact me further by phone or in person."*** **(Exhibit "J")**"	**Admissible.** See the reasons given under para. 26 of this Schedule "B", above.
28	"On the same date, Fraser replied, *"...What you request or purport to direct is not an option. Just because you direct or request it. (sic) Please grow up and/or otherwise get your head grounded in reality... If you have a lawyer who is going to act on matters, give me that person's name ... and I will abide by any applicable contact rules that apply in that scenario. Otherwise, I **will deal with you directly as I see fit."*** **(Exhibit "K")**"	**Admissible.** See the reasons given under para. 26 of this Schedule "B", above.

29	"On **April 27, 2023,** I emailed Fraser and stated,"*I am reiterating my request that* ***you not contact me by phone or in person and, more specifically, that you do not attend at my home property.*** *Please arrange to have your process server contact me by phone or email and I will coordinate a time to accept service* of *the pleadings."* **(Exhibit "L")**"	**Admissible.** See the reasons given under para. 26 of this Schedule "B", above.
30	"On the same date, Fraser again refused to acknowledge my directive not to attend my personal property and instead used the Civil Procedure Rules as a shield to justify his conduct. He replied, "*I do not believe anything was unclear in my email of April 13, 2023. However, I will reiterate for you: If you have a lawyer who is going to act on matters, [please] give me that person's name (as I originally requested when I called you) and I* ***will abide by any applicable contact rules that apply in that scenario. Otherwise,*** *I* ***will deal with you directly as*** *I* **see** ***fit*** *[with the obvious implied aspect of that being dealings in accordance with the law]."* **(Exhibit "M")**"	**Admissible.** See the reasons given under para. 26 of this Schedule "B", above.
31	"Despite his purported expertise in the Rules, including as a lecturer in civil procedure at the Schulich School of Law, Fraser made no mention of Rule 31.04(1), which excludes a litigant from effecting personal service on another litigant."	**Admissible.** Actions which engage compliance with the Rules are relevant to costs. Fraser's alleged expertise and role as a lecturer in civil procedure may, if proven and accepted by the Court and subject to weight, .be relevant to the issue of civility and, in particular, the purpose behind any impugned actions.
32	I am advised by my Father, Bruce MacIntosh, and do verily believe that on **October 18, 2023,** Justice Mona Lynch chastised Fraser with respect to the manner in which he attended and conducted himself at my Father's private residence. She issued an Order prohibiting him from doing so, as described in her subsequent costs award of	**Partially Admissible** Unlike the proceedings discussed under para. 9 above, Fraser's claims Mr. MacIntosh are related in that they included the same allegations of defamation arising out the same facts and circumstances. Moreover, the evidence is

	March 5, 2024. See 2024 NSSC 63 at para. 13: ... *"The Court ordered that...the individual Plaintiff, Donn Fraser,* ***refrain from personally attending the Defendant's property for any purpose connected with the proceeding, including service of documents*** *.... and that the* ***parties conduct themselves*** *in all dealings with the Court regarding the action and its interlocutory proceedings,* ***with civility and other attributes required by Officers of the Court.""***	precise (allegedly attending Mr. MacIntosh's private residence despite requests not to) and very clearly connected to the same allegations made by MacIntosh-Wiseman. These allegations are related to the issues discussed in paras. 26 -31 of this Schedule "B", above and relevant to the issue of civility. However, the words "chastised Fraser with respect to the manner in which he attended and conducted himself at my Father's private residence." are struck. They are commentary based on Mr. MacIntosh's impressions and of little evidentiary value and outweighed by their prejudicial effect.
33	On **March 5, 2024,** Justice Mona Lynch issued her written Decision on Costs in favour of Bruce MacIntosh and against Fraser and commented, *inter alia at paras. 43-44:* *"The Plaintiffs' unwarranted allegations* of *misconduct against the Defendant and Defendant's counsel in relation to these motions put the reputations of two senior and one Junior member of the Bar at risk of being sullied.* ***As I said on October 18,2023, in my entire Judicial career, I have never seen anything like the lack of civility displayed by the Plaintiffs towards the Defendant and his counsel ....*** *While I am very tempted to find this case to be one of the rare and exceptional circumstances to sward solicitor and client costs, I am reluctant to do so.* ***The Plaintiffs' conduct comes as close as possible to being reprehensible,*** *but I am not prepared to go as far as finding it reprehensible.* (2024 NSSC 63. Bolding added.)"	**Inadmissible** The ultimate conclusions regarding civility by Lynch, J. based on comments made which are not before this Court might be relevant to the issue of civility and its impact on costs. However, the evidence is imprecise, and the Court's residual discretion is engaged. They have little probative value and much greater prejudicial effect. This Court's conclusions on civility and costs should be based on the evidence before it – not before another judge. Fraser's commentary that there is no basis for Lynch, J.'s decision was unnecessary and is similarly disregarded.

34	"Only ten days after Justice Lynch's rebuke of Fraser's conduct towards my Father in that related litigation, and while I was still represented by legal counsel, early in the morning of **March 15, 2024** (before 9:00am), **Fraser attended at my personal residence and rang the doorbell.** I had repeatedly advised Fraser that he was not to attend at my property. In the year preceding this visit, out of concern for our safety due to Fraser's conduct towards me and other litigants, I felt obligated to have troubling discussions with my husband and with my teenage sons about what any of us would do if Fraser visited our home. My husband advised me, and I do verily believe, that when he opened the door on March 15th, he was purposefully polite to Fraser in accepting the unexpected envelope that Fraser gave him."	**Admissible.** I refer to the reasons given under paras. 26, 32, and 33 of this Schedule "B" above. Subject to any concerns around admissibility, Fraser may present argument and evidence regarding MacIntosh-Wiseman's legal counsel. Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters which bear upon costs versus professional ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on costs) can be addressed as part of this process.
35 and Exhibit "N"	"Fraser's purported reason for attending my residence was to that the Court had ordered him to pay me $1,500 in costs, and he refused to make the payment in the appropriate manner, through my legal counsel. The envelope contained $1,500 in cash and a letter in which Fraser stated, in part: *" ... Given the demonstrated unethical conduct of various lawyers within the law firm acting for you and your father. .... it is farcical if you expected that such monies would ever be routed through that law firm."* A copy of the letter that Fraser delivered to my residence, along with correspondence between my legal counsel and Fraser regarding the inappropriate attendance at my home, is attached as **Exhibit "N"** hereto.	**Partially Admissible.** I refer to my reasons under para. 34 of this Schedule "B" above. The words "misconduct" shall be struck as it adds an unnecessary gloss of ethical breach which is not in issue. The word "reprehensible" shall also be struck for reasons given under para. 4(sixth sentence) of this Schedule "B", above.

	This is another small example of Fraser's misconduct and unreasonable behaviour not only being reprehensible, but also unnecessarily increasing my legal fees."	
36 and Exhibit "O"	"On **July 10, 2024,** I was still represented by Peter Rogers and Raylene Langor of McInnes Cooper, yet Fraser continued to send multiple emails to me directly, and added to his harassment by copying my husband's former work email, which he would or should have known would be monitored by other staff within the Legal Department of JD Irving Limited, where my husband had been General Counsel until our recent return to Nova Scotia. As a consequence, I sent the following email to Fraser: ***"Your communications and conduct are making me and my family increasingly uncomfortable.*** *I am writing to request that you cease any further direct communication with me, or with my husband (who no longer utilizes the JD Irving email address). Any matters related to the legal proceedings between you and I should be directed to my legal counsel, Raylene Langor.* ***Please refrain from any further communication to me personally. You have been notified on multiple occasions not to attend my personal property in Little Harbour. Any future attendance at my property will be considered trespass."*** **("Exhibit "O")** Fraser did not comply with my directions.	**Admissible.** I refer to my reasons given under para. 26 of this Schedule "B", above.
37	"I have been advised by Bruce MacIntosh, and do verily believe, that in addition to Lynch J's warnings in her oral remarks at the Hearing of October 18 and her costs award of March 5, 2023, various other cautionary warnings have been directed to the Plaintiffs by: Justice Denise Boudreau on July 28, 2023; Justice Christa Brothers on September 8, 2023; and Justice Mona Lynch on October 3, 2023."	**Inadmissible.** I refer to my reasons given under para. 33 of Schedule "B", above. In addition, the reference to "various other cautionary warnings" is too imprecise to have probative value**.**
38	"I am further advised by my former colleague Julie MacPhee and do verily believe that Justice Jamie Chipman, on	**Inadmissible.**

	October 5, 2023, preceding the Lynch hearing of October 18th, had commented that the litigation temperature needed to be lowered. He advised that he would resist the call to sanction anyone at that time for inflammatory and excessive language. He said that the conduct of the parties, without naming names, might be a harbinger for future reference. Fraser has repeatedly asserted that such cautionary warnings from the Courts have often been intended for others and not him. However, in 2024 NSSC 288 at para. 22, Justice Chipman confirmed that his earlier comments were indeed directed towards Fraser."	I refer to my reasons give under para. 33 of Schedule "B", above.
39	"At no time have I communicated with Fraser in other than a professional and calm manner, notwithstanding the many provocations."	**Admissible** Evidence regarding MacIntosh-Wiseman's treatment of Fraser is relevant to the costs and the issue of civility.
40	"To illustrate the pattern of harassment, intimidation and abuse of legal process, and the endless attempts to discredit my professional reputation in a manner that I attest is reprehensible, I provide the following illustrative communications, sent to me directly, by Fraser. Although these communications at varying times related to both Fraser's lawsuit against me and also his separate lawsuit against my Father, Bruce MacIntosh, the references and allegations about my Father and myself, are comingled in the pleadings of both lawsuits. The following specific email messages gave me ever-escalating concerns for the personal safety and psychological wellbeing of myself and my family members."	**Partially Admissible** Allegations regarding Fraser's conduct towards MacIntosh-Wiseman and her family Mr. MacIntosh in this context are sufficiently similar and relevant to the issues and objectives which bear upon costs. I repeat that Fraser's claims Mr. MacIntosh are related in that they included the same allegations of defamation arising out the same facts and circumstances. The words "attempts to discredit my professional reputation in a manner that I attest is reprehensible" is struck for reasons given under para. 4(sixth sentence) of this Schedule B, above. In addition, I repeat the caution that this is not an opportunity to re-litigate the matter. Evidence and arguments

		regarding MacIntosh-Wiseman's professional reputation are not to be re-litigated unless they specifically relate to how Fraser conducted the litigation (e.g. if the allegations were unnecessarily repeated given the circumstances)
41	"On July **16, 2024,** Fraser copied me on an email to my Father, and also copied the message to my husband's former work email address and to my sister, Leisa. This email was frightening, at various levels, as it included irrelevant, unnecessary and disparaging insults against both my Mother and Father, as well as threats of physical harm to my Father. The threats which Fraser suggested would purportedly fall *'within the limits of the law'* were threats nonetheless, as he articulated his opinion that use of force against my Father would be permissible if he felt justified in executing a citizen's arrest. Fraser wrote: *"You slimy, but brainless creature... Your lies in general are unbelievable, but your rotted brain's inability to even understand what lies could theoretically makes sense is remarkable...If you are caught engaging in such behaviors again, in a context where I have time to deal with you, you will be squarely* ***addressed within the limits of the law. The same goes for your simpleton wife,*** *should I ever catch her engaging in such behaviors. Smarten up."* [While not directly relevant to my lawsuit with Fraser, I wish to formally put on the record that I take issue with the chauvinistic and misogynistic description of my Mother as a 'simpleton'. My Mother is a retired dental hygienist and was the President of the Canadian Dental Hygienists' Association who spearheaded the provincial and national initiatives to enable self-regulation of the dental hygiene profession. In addition to her	**Admissible** These allegations involve events which occurred outside of a process formally contemplated under the Rules. However, they occurred during the course of the litigation and at a time where, based on the evidence, the relationships between Fraser and the MacIntosh family was limited to the ongoing, related pieces of litigation. I also note that these issues with Mr. MacIntosh would be subsequently raised in communications related directly to the litigation (see the reasons given under para. 43 of this Schedule "B", below). In my view, there is a sufficiently clear and compelling connection between the impugned evidence and the twin goals that motivate a costs award (indemnification and promoting fair and efficient legal proceedings) including alleged concerns around safety and the extent to which these events may relate to civility to be relevant. I refer to my reasons at paras. 77 - 83.

	professional accomplishments and having raised four happy and well-adjusted daughters, in her retirement, my Mother has spearheaded Pictou County Safe Harbour which has supported the local resettlement, community integration and employment support of approximately twelve refugee families. Other than a non-controversial and cordial relationship with Fraser while he was a law partner of me and my Father, I am advised by my Mother and do verily believe that her only interaction with Fraser was opening the front door of her residence on more than one occasion to find Fraser delivering documents, despite repeated notices not to attend their private residence. She has advised me that at no time was she confrontational and Instead simply closed the door as soon as she was able. Fraser's unwarranted and offensive insults of my Mother demonstrate that his communications in this litigation vastly exceed any reasonable scope and constitutes personal harassment.]"	The Court's residual discretion is not engaged. Again, this is subject to weight and Fraser having the opportunity to present evidence and make argument as they bear upon the costs he is being asked to absorb. Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters which bear upon costs versus professional ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on costs) can be addressed as part of this process.
42 and Exhibit "P"	"I replied on the same date, again noting "*please* ***immediately cease sending messages to my husband's former email address,*** *which is no longer accessed by him."* I was concerned by both the content of the messages, and also the fact that Fraser was purposefully involving my husband's former employer. **(Exhibit "P")**"	**Admissible.** I refer to my reasons given under para. 26 of this Schedule "B", above.
43 and Exhibit "X"	"Again, on **July 16, 2024**, Fraser responded, **copying his reply to my husband's former work email,** *"Ms. MacIntosh - do not give another directive, of any form. Your lack of insight seems to be rivalled only by your father's, although he at least managed to last longer than you in private practice even without his Daddy propping him up for much of it.* ***That you would think there was some sense of purpose in making such a pointless demand,*** *in a context where I already requested that you to provide me current*	**Admissible.** I refer to my reasons given under para. 26 of this Schedule "B", above. To the extent this evidence is linked to Mr. MacIntosh, I refer to my reasons given under para. 41 of this Schedule "B", above.

	email for Mark Wiseman if the JD Irving one is not one he is using, ***speaks volumes to your lack of insight or even basic sense. Smarten up yourself,*** *and please do something responsible with your father."*"	
44 and Exhibit "Y"	"Yet again, on, **July 16, 2024,** Fraser emailed my father, my sister, my husband (via his former, inaccessible work email which he had been repeatedly directed not to use) and me, as follows: *"Mr. MacIntosh, in fairness to you and so you have no basis to feign future surprise - without limiting any other legal rights that I will be entitled to assert or rely up in taking any actions or steps against you, if you are caught repeating again what you did yesterday then* ***I will have reasonable grounds to believe you are engaging in criminal harassment and I will make a citizen's arrest of you,*** *which is permitted and authorized at law given the hybrid nature of that crime.* ***Anyone engaged in making a citizen's arrest is of course justified and <u>permitted to use as much force as is necessary</u> for that purpose.*** *So again, smarten up and do not repeat your behaviors of yesterday."*"	**Admissible.** I refer to my reasons given under para. 26 of this Schedule "B", above.
45	"I have been advised by my Father and do verily believe that he did nothing to attract Fraser's threats of a citizen's arrest. Fraser had accused my Father of following him when they momentarily encountered each other in the Pictou Prothonotary's office. Following that threat, my Father explained both to me and subsequently to the RCMP that he turned and left the Prothonotary's office as soon as he saw Fraser and tried to avoid being followed thereafter."	**Inadmissible** Hearsay
46 and Exhibit "Z"	A few days later, on **July 19, 2024,** I received an email from Fraser which was one the most personally disturbing messages I have received to date. Fraser copied this email to my husband's former work address (again), to my sister, and to an RCMP officer/constable by the name of Joshua Penton. (I have never had any dealings with	**Admissible** I refer to my reasons given under para. 41 of this Schedule "B", above.

	Penton and do not know why Fraser chose to copy him.) Fraser's email explained that if he had another encounter with my father which he felt warranted **placing my father under citizen's arrest,** he believed he was justified at law to **use such force as is reasonably necessary.** Fraser then addressed RCMP officer/constable Penton, **referencing the Portapique massacre.** and stating, *"of course your organization is a proven disgrace whose* ***incompetence cost lives that otherwise could have been preserved in the mass shooting of 2020*** *(among other atrocious injustices the RCMP are attached to).* ***But you are also now on notice here as to what is going to unfold, if Bruce MacIntosh misconducts himself again*** *so as to commit criminal harassment of me."*"	
47	"Fraser gratuitously sent this email to the RCMP and chillingly referenced, in one sentence, Portapique and the RCMP's failure to avert mass loss of life; followed in the next sentence by putting the RCMP **on notice as to what is going to unfold** if Fraser deems Bruce MacIntosh to misconduct himself. Both myself and other members of my family reacted viscerally and fearfully to this unsubtle veiled message, especially given Fraser's prior knowledge of our expressed safety concerns, through not only earlier emails from myself, but as my Father advised, and I do verily believe, such concerns were also addressed explicitly in the October 18, 2023 Hearing before Justice Lynch. Fraser's communications to my Father, and by copy to me, had an intimidating and chilling effect in terms of my communications with him in the context of this litigation."	**Admissible** I refer to my reasons given under para. 41 of this Schedule "B", above.
48 and Exhibit "1"	Communications from Fraser with intimidating undertones have continued as recently as his expressed death wishes towards my Father some four weeks ago. I am advised by Bruce MacIntosh, and do verily believe, that he received a litigation	**Inadmissible.** This is post-litigation conduct at a time when the summary judgement was already under appeal. I note that the communication was written the

	related email from Fraser dated **January 21, 2025** that included, *inter alia, "As to your upcoming personal travel plans, independent of anything connected to me of course, I would be delighted if fate unfolded such that you do not make it back. The world in general would be a better place."*"	day after the Order dismissing the claim was issued. To the extent this has any bearing on costs, it may be raised in the appeal proceedings.
49 and Exhibit "2"	"Ten days later, on **January 31, 2025,** Fraser continued his chilling intimidation and harassment of my Father, writing: *"That said, my wishes for you in respect of your travels stand, by even greater implication now that I have read your disgusting and unethical lies to even Justices to the Supreme Court of Canada.* ***Losing opportunity to discover you would be a small loss relative to the improvement to the world in general if by fate and independent of anything connected to me, something happens such that you do not return from trip."***"	**Inadmissible** I refer to my comments under para. 48 of this Schedule "B", above.
52	"Based on correspondence that Fraser has sent to this Court and other courts in related litigation matters, in which Fraser has expressly alleged that I am unethical, misleading and/or failing in my obligations as an Officer of the Court, I hereby state under oath that I have, at all times, been professionally honest, transparent and ethical in all dealings with the Court, and that I have made all reasonable efforts to see the adjudication of this matter resolved in a just, speedy and inexpensive manner, per Rule 1.01. Other than Fraser's unsubstantiated and professionally harmful allegations, no other lawyer, court or client has ever made or intimated such allegations against me."	**Partially Admissible** The first sentence is struck. MacIntosh-Wiseman disagrees with the allegations made in the Statement of Claim. The claims in the Statement of Claim have been summarily dismissed, for the reasons given in my earlier decisions. In my view, the first sentence seeks to resurrect and re-litigate the substantive claims that have been struck. The second sentence is admissible for a more limited purpose. It is relevant as a comparator to how (or the manner by which) Fraser litigated and the context within which Fraser's allegations of professional misconduct were made. I refer to para. 73 of my decision related to the line of inquiry "How [the impugned

		actions] were said or done? (Context)"
53	"At the time the Decision was received relating to my Motion for Summary Judgment, I had amicably terminated my retainer of Peter Rogers, KC, and Raylene Langor, **in order to cease incurring additional legal fees.**"	**Admissible** Arrangements with legal counsel are very clearly related to cost.
54	"My decision to terminate my legal retainer was not lightly or easily made. For the benefit of my family's financial security, I determined that I could no longer justify continued legal costs in light of my belief that Fraser remains motivated to financially and psychologically harm me through forcing me to incur unnecessarily protracted legal costs."	**Admissible** Arrangements with legal counsel are very clearly related to cost.
55	On **January 3, 2025,** Fraser sent correspondence to the Court in which he stated that he did not accept my explanation for requiring a delay in the cost submission as being legitimate. Fraser explicitly stated to this Court: *"The court should not be misled by fluff language in her latest letter...**If the court were to bore down on Ms. MacIntosh's excuses** for requesting the excessive extension, by which she implies some of the same grandiose views of what she believes she engages in as seemed to underlie her request for extra time to analyze Your Lordship's written decision before publication, **I am reasonably confident there would be a different picture from what she alludes to and that her request for more time would be seen as really just yet another case of her continued inability to, 'pat her head and rub her belly at the same time,'** as most can do with a little bit of effort if they try."*"	**Admissible** While this correspondence arose after my decision was rendered after the 2024 NSSC 378 decision, it is distinguishable in content and purpose from the communications described in paras. 48 – 49 above in that it is prior to the Order being issued on January 20, 2025. As such, I remained seized. It is also clearly connected to a step in this litigation (costs).
56	"I am the Canada Director and the sole representative working for The Shapiro Foundation in Canada, overseeing the Foundation's funding and all	**Admissible.** This is related to the issue described under para. 55 of this Schedule "B", above.

	projects/programs linked to Canadian partners and Canadian humanitarian/immigration programs. I do not have support staff or colleagues to whom my work can be delegated, meaning that when I am engaged in high-priority commitments, there is no one else available to assume my responsibilities. This reality has directly influenced my need to request reasonable extensions, as I must personally manage all aspects of my work."	
57	"I am willing to provide the Court with any requested details about my work commitments, but have hesitated to do so because of Fraser's pattern of attempting to involve unrelated parties in this litigation. As just one example, in Fraser's **January 3, 2025** correspondence to the Court, he made personally offensive, untrue, and patronizing comments about the philanthropic couple who are my employers, including remarks about the personal incomes of my U.S.-based colleagues, despite that information having no relevance to the legal matter at hand. His descriptions of the Foundation's philanthropic refugee work, mandate and funding sources were not accurate, as well as having no relevance to this civil matter, beyond the intention to embarrass and demean me and my work."	**Admissible.** This is related to the issue described under para. 55 of this Schedule "B", above.
58	"As it relates to my requests to the Court (In December 2025) for additional time to review the draft Decision before responding, as well as my request for an extension to the filing deadline for my costs submission, I dispute Fraser's suggestion that the reality of my schedule would paint a *'different picture'* than what I presented to the Court. I remain cautious about explicitly naming individuals in my work network because of Fraser's pattern of attempts at retribution, but can advise that during the week that the draft Decision was presented to the parties for review, I was preparing for meetings with the most senior levels of the Government of	**Admissible.** This is related to the issue described under para. 55 of this Schedule "B", above.

	Canada about some fundamental changes to Canada's immigration policies and programs, specifically as they relate to refugee projects that the Foundation has been funding and supporting on its own, at a time when such government policies are under unprecedented public scrutiny."	
59	"Regarding my request to extend the cost submission deadline to February 28th, my agenda over the past six weeks has included meetings with Ambassadors and senior officials from Canada, Jordan, and the United States, both before and after the new President's inauguration. My Washington meetings and discussions with State Department officials, including those who work within the White House, plus the International Organization for Migration, and the United Nations Refugee Agency focused on the adverse impact of the new administration's policies on global refugee and immigration programs. These meetings were with respect to the day-to-day, hands on work of our Foundation and the sustainability of certain of our active projects, which were time sensitive in light of the changing political landscape in the US and globally."	**Admissible.** This is related to the issue described under para. 55 of this Schedule "B", above.
60	"My recent availability was also impacted by the fact that during the month of February I had a 12-day mission to the UK and Jordan, where, as Mission Lead, I introduced and facilitated working groups amongst thirteen Atlantic Canadian partners and multiple Jordanian partners, in an effort to launch immediate streamlined licensing and recruitment of internationally educated healthcare workers who could be fast tracked for Nova Scotian accreditation. I had sole, lead responsibility for this multi-party mission, personally facilitating all working group meetings and successfully guiding project implementation discussions amongst the parties."	**Admissible.** This is related to the issue described under para. 55 of this Schedule "B", above.

61	"In addition to suggesting that my direct communications to the Court should not be accepted at face value, on **January 7, 2025,** Fraser wrote to the Pictou Prothonotary in relation to Pic No. 538679 and alleged that I had breached my undertaking to the Nova Scotia Barristers' Society, by swearing an Affidavit while holding non-practising status. Fraser wrote the following about an Affidavit which I swore for Bruce MacIntosh: *"It is even sworn before his failed- lawyer of a daughter, Sarah MacIntosh, who scurried away from the private practice of law after years of failing to meet partnership obligations and in circumstances where she could not independently "cut it" in private practice. She has been a non-practicing lawyer since November 2020, meaning she had to sign an undertaking with the Nova Scotia Barristers' Society not to engage in the practice of law (see Regulation 5.5.2(f) under the Regulations to the Legal Profession Act). Yet since then, she has* ***breached her undertaking*** *by purporting to provide legal advice in other contexts. This is the individual who MacIntosh has had take his affidavit- a failed, non-practicing lawyer, who has signed an undertaking* ***not to engage in the practice of law which she breaches.*** *Such seems to be in keeping with the disreputable nature of the MacIntosh clan, which focuses on what its members want, rather than what is ethical, appropriate or right. Competent practicing lawyers would not sign-off on someone swearing an affidavit such as what Bruce MacIntosh has submitted with its inappropriate Exhibit."* **(Exhibit "Q")**"	**Admissible.** I refer to my reasons under the following paras. of this Schedule "B", above: 1. Para. 32 related to the relationship between this litigation and Mr. MacIntosh – including Fraser's claim against Mr. MacIntosh; 2. Para. 52 related to the limited purpose and the fact that this is not an invitation to re-litigation the issues which have been determined; and 3. Para. 55 regarding timing and content.
62	"Contrary to Fraser's assertion that my notarization of an Affidavit Is in breach of my obligations as a non-practising member of the Nova Scotia Bar, I attach a copy of a Letter of Standing from the Nova Scotia Barristers Society, which was provided to	**Admissible.** I refer to my reasons under para. 61 of this Schedule "B" above.

	me in May 2023. This letter makes clear that I remain authorized to notarize documents in Nova Scotia while holding a non-practising license status. **(Exhibit "R")**"	
63	"My instructions to legal counsel have consistently been focused on finding the most just, speedy and inexpensive way to resolve this litigation while maintaining my position that the defamation claim was spurious and without merit. As it relates to the limited hearing of this matter, despite the subsequent ruling of this Court, the legal advice I received, consistent with the same approach taken by my Father before Justice Lynch, was to clearly state on the record that Fraser's multitude of baseless allegations against me were strongly disputed by me per my filed Defence, but that to lead evidence controverting the many allegations we argued were not material to the determination of defamation and would result in a lengthy and unnecessary hearing of the matter. I have accepted the fact that Your Lordship ruled otherwise, but my legal strategy was in furtherance of Rule 1.01, for which I have paid a high price with respect to my professional reputation."	**Partially Admissible** I refer to my reasons at para. 52. This evidence is relevant to the more limited purpose associated with costs. Moreover, this is not an opportunity to re-litigate matters that have been determined. I do not propose to review my decision 2024 NSSC 378 regarding these issues regarding certain aspects of MacIntosh-Wiseman's financial performance as a law partner. It speaks for itself. As such, the following words in the final sentence shall be struck "I have accepted that Your Lordship ruled otherwise, but…" and ", for which I have paid a high price with respect to my professional reputation." The balance of the sentence "[M]y legal strategy was in furtherance of Rule 1.01" remains.
66	"As noted earlier in this Affidavit, Fraser refused to acknowledge Ms. Langor's role as my legal representative, even after we went through the formal steps of adding her as a solicitor of record, following Fraser's objection that she was not listed in the Court record. This refusal by Fraser to deal directly with Ms. Langor Impeded my ability to reduce legal costs, including but not limited to the fact that it necessitated both Mr. Rogers and Ms. Langor preparing for and attending the contested hearing.	**Admissible** I refer to my reasons under paras 19 and 20 of this Schedule "B", above.
67 heading	"**FRASER'S EFFORTS TO INCREASE COMPLEXITY AND COSTS**"	**Admissible**

		I refer to my reasons under para. 8(h) of this Schedule B above.
67	"I refer to the Affidavit of my legal counsel, Peter Rogers, KC, which describes the increased costs that resulted from Fraser's purposeful and strategic efforts to approach this litigation in a confrontational, take-no-prisoners manner."	**Admissible.** Subject to weight, MacIntosh-Wiseman's comments on those facts that alleged increased her personal exposure to costs is relevant.
68	"Despite Fraser's repeated requests that I provide him with my husband's new email address, I have not done so. My husband is not a party to this litigation, nor is there any legitimate reason for Fraser to be sending communications to him. My husband recently took on a new position as General Counsel of the Workers' Compensation Board of Nova Scotia. When he learned of this appointment, Fraser sent emails to my husband's new work account prior to my husband even starting the position, on August 1, 2024."	**Admissible** I refer to my comments at para. 26 above.
69	"Fraser has continued to copy email communications to my husband, via his new work email account, in relation to Fraser's lawsuits against me and/or my Father, despite my husband having no role in either piece of litigation."	**Admissible** I refer to my comments at para. 26 above.
70	"Following Fraser's email message to the Court and myself, indicating that he intended to appeal the Decision in this matter, I was concerned that Fraser might consider attending my property to deliver the Notice of Appeal to me personally. On **February 3, 2025,** I emailed Fraser stating: *"Please note that service of your materials can be effected via email and, as previously directed, you are not to attend at my personal residence."*"	**Inadmissible.** This is post-litigation conduct at a time when the summary judgement was already under appeal. There are no exceptional circumstances related to the completed litigation. To the extent this has any bearing on costs, it may be raised in the appeal proceedings.
71	"On **February 3, 2025,** Fraser replied, with **copy to my husband's work email,** adopting a new litigation strategy in these proceedings -fat shaming:	**Inadmissible.** I refer to my reasons given under para. 70 of this Schedule "B" above.

	"Regarding your closing comment, however, as has been express over repeatedly to your incompetent and unethical Father, as well as I believe you - ***you do not get to dictate what use is made of a designated address for delivery. I will use whatever becomes any designated address for delivery upon you, if and as I see fit regardless of what you assert.*** *To the extent you believe you can simply dictate that a designated address for delivery cannot be used as such by the adverse party, you are demonstrating incompetence. I will confess that I have been a bit surprised by some of what you have demonstrated in litigation. There is a pattern with some within the MacIntosh clan of delusion, lack of insight and lack of good character, and your Father has certainly demonstrated incompetence But while your various failures as lawyer in private practice and you breaching obligations owed to me and others seemed to have at their root elements of laziness, lack of discipline and/or an inability to effectively manage or cope with a variety of different client responsibilities at once, in the past I had never really thought you stupid or necessarily inherently incompetent (as distinct from lacking experience or developed abilities, including to cope with handling significant file commitments on your own).* ***Obviously I do not know with certainty what may be all of the causes of all what you have been displaying since you were sued or what I have learned to have been. your inappropriate intermeddling in the former partnerships affairs alongside your disgusting Father and in discussions with the deranged Julie MacPhee.*** *Capacity for dishonesty and delusion would fit with you trying to distort and develop a false narrative to try to keep hidden that you showed an inability to cut-it in private practice at the former firm would fit, (just as you wanted to try to find a way down play*	

	some of what even Justice Keith saw the evidence showed about your performance), and would provide some explanation. You have been dishonest in some of what you have asserted and have tried to mislead the Court (through your lawyer or otherwise). ***But the attached article also perked my interest. It may be worth a read by you and your husband, and of interest to you both (as I know Mark is always very supportive of you). As a potential upside – you may both note some positive comments that studies suggest there can be some improvements,*** *par the head-note and comments beginning at paginated page 448."* That email, together with its referenced article attachment, are attached as **Exhibit "T"** hereto. The referenced medical article that Fraser sent to my husband and me is entitled, ***"The relationship between obesity and cognitive health and decline".***"	

Schedule "C" **Affidavit of Peter Rogers, K.C.**		
Paragraph	Plaintiff's Impugned Words/Statements	Decision
1 (last line)	"…following a clerkship to the then Chief Justice of Canada in 1986."	**Admissible.** Mr. Roger's experience is relevant to the issue of costs and the rates charged to his clients.
11	"I decided to write down legal fees or not post all my time for a variety of reasons including because the scope of our retainer was for a fellow member of the Nova Scotia Bar who had experienced the misfortune of being sued by a self-represented lawyer who displayed through his communications and conduct that he was dedicating vast amounts of time and energy	**Admissible.** These allegations from legal counsel ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court; subject to both an assessment of weight and the evidence/arguments presented by Fraser. Fraser criticizes Peter Rogers, K.C. as "…a lawyer of poor regard, known to be arrogant and prone to questionable behaviours, among other things. He has proven himself to engage in unethical

	against Ms. MacIntosh-Wiseman, choosing to fight about or oppose her on nearly every aspect of the litigation. In correspondence, the Plaintiff described his mindset as being "as personal as it gets"."	behaviour and to amass unethically excessive billings." (Fraser's submissions at para. 190) Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters which bear upon costs versus professional ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on costs) can be addressed as part of this process.
12	"Throughout the scope of our retainer, the unnecessarily adversarial, uncivil and prolix nature of Mr. Fraser's communications were time-consuming to respond to. Many of the written materials were not properly proof-read and were difficult to read and absorb. Some had to be filed in several iterations. This conduct by Mr. Fraser resulted in a significant increase in the time that our firm was required to expend on the file, thereby increasing the amount of legal fees invoiced to Ms. MacIntosh-Wiseman."	**Partially Admissible.** The alleged interference may ground findings of fact that engage the principles which inform costs (indemnification or encourage fair and efficient proceedings) – if proven and accepted by the Court and subject to weight as well as the evidence/arguments presented by Fraser. However, the words "uncivil" shall be struck as it embodies a legal conclusion that the Court is being asked to make. Fraser alleges that, among other things, the McInnes Cooper billing records relied upon by MacIntosh-Wiseman simply disclose another case of lawyers at this firm "being grossly ineffective and unproductive lawyers spending significantly excessive amounts of time, but with that having no connection to my approach." (Fraser's submissions at para. 195). This would include counsel who worked on this matter (Peter Rogers, K.C. and Raylene Langor) Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters

		which bear upon costs versus professional ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on costs) can be addressed as part of this process.
15 (second sentence)	"Due to Mr. Fraser's uncivil and unprofessional conduct towards Ms. Langor, neither Ms. MacIntosh-Wiseman nor I were comfortable in placing Ms. Langor in that situation with the Plaintiff, notwithstanding our joint confidence in Ms. Langor's professional ability to otherwise handle the matter."	**Partially Admissible** Decisions regarding which legal counsel would engage with Fraser and how counsel prepared for a hearing are relevant to costs. However, the words "uncivil and unprofessional" shall be struck. The word "unprofessional" adds an unnecessary gloss with ethical implications that are not in issue. In addition, the prejudicial effect of this word otherwise outweighs any probative value. The words "uncivil and professional" is inadmissible and shall be struck. The word "uncivil" is a summary or conclusory word summarizing an issue the Court is required to adjudicate upon. In addition, the prejudicial effect outweighs any probative value. Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters which bear upon costs versus professional ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on

		costs) can be addressed as part of this process.
15 (third sentence)	"Given Ms. Langor's preparatory work on the file, it was necessary for both she and I to attend the hearing of the matter."	**Admissible.** Decisions regarding counsel's preparation and attendance at a hearing are relevant to costs. Fraser alleges that: 1. Peter Rogers "…engages in unethical billing practices, ignorantly refuses to respond to communications in breach of his professional obligations, inappropriately schedules matters without proper consultation in breach of the Rules and ethical obligations, among many other problematic attributes, is not qualified to render opinions alleging unprofessional conduct of others." (Fraser's submission at para. 198) 2. What "McInnes Cooper did in this case was simply in keeping with that firm's regular practice in unproductively handling files and its unethical billing standards, with bills resulting which are completely divorced from level of value delivered on a file and which in fact represent scandalous unethical amounts charged to clients." (Fraser's submissions at para. 200) Should he elect to do so, Fraser may pursue these allegations with sworn evidence and argument, to the extent it bears upon the costs he is being asked to absorb and subject to my comments regarding the distinction between matters which bear upon costs versus professional

		ethics. The extent to which any such evidence or competing allegations from Fraser will impact costs (either decreasing or increasing costs or have no effect on costs) can be addressed as part of this process.