

CANADA / JUDGMENT

MacIsaac v. Frayne

2007 BCSC 1620

COURT

Supreme Court of British Columbia

DECIDED

7 November 2007

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2007 BCSC 1620 MacIssac v. Frayne

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

MacIsaac v. Frayne,

2007 BCSC 1620

Date: 20071107

Docket: 07/3354

Registry: Victoria

Between:

MacIsaac and Company

Plaintiff

And:

Astrid Ingrid Frayne

Defendant

Before: District Registrar Bouck

Reasons for Decision

Counsel for the Plaintiff/Law Firm:

M. L. Pohorecky

Counsel for the Defendant/Client:

J. Fowler

Date and Place of Hearing:

October 25, 2007

Victoria, B.C.

THE APPOINTMENT

- [1] The Law Firm seeks a review of its bill issued to the Client on July 10, 2007 (the "Bill"). Although the style of cause describes the parties as plaintiff and defendant, this review is conducted pursuant to s. 70 of the Legal Profession Act, S.B.C. 1998, c. 9 (the "Act"). Thus, the parties will be referred to in these reasons as the Law Firm and the Client.
- [2] The Law Firm's appointment seeks both a review of the Bill and "an examination of the agreement between Michael Pohorecky and Astrid Frayne dated April 23, 2003." Pursuant to s. 68 of the Act, only the Client is entitled to have the agreement examined. After canvassing the issue with the parties, I determined that such an examination was not being sought.
- [3] While the agreement is not under examination, its terms are central to the determination of whether the Client is liable for the Bill.

THE BILL

- [4] The Law Firm issued the Bill following termination of the solicitor/client relationship. Until that termination, the Law Firm represented Ms. Frayne in a personal injury action.
- [5] In the Bill, the Law Firm claims fees of \$20,000 for services performed between April 22, 2003 and November 9, 2006. As well, it claims disbursements of \$19,140.87, including taxes. The total amount of the Bill is \$43,097.32. It remains unpaid. However, the Client is agreeable to paying some of the disbursements which altogether total \$14,876 (plus GST).

THE ISSUES

- [6] The central issue in this proceeding is whether the Law Firm is entitled to any fee whatsoever.
- [7] The Bill is issued pursuant to a contingency fee agreement dated April 24, 2003 (i.e., the agreement that was to be examined). In support of its claim for remuneration, the Law Firm relies on the following clauses in the agreement:

I UNDERSTAND that disbursements incurred in the prosecution of my claim may be advanced by MacIsaac and Company, acting as my agent. I understand that in any event, I will remain liable to reimburse MacIsaac and Company for all disbursements it incurs. I understand that interest will be charged on all disbursements incurred by MacIsaac and Company at a rate of 10% per annum. MacIsaac and Company will endeavour in every instance to collect all disbursements from the Defendants as per the Rules of Court and in the case of disbursements paid by me will reimburse me for those from the disbursements collected.

and

IN THE EVENT that I elect not to proceed with my claim, or refuse to follow my lawyer's advice, or should I elect to change lawyers, or should I provide faulty information to my lawyer, then this agreement may be terminated at the option of MacIsaac and Company. I will promptly pay for legal services performed up to that time at an hourly rate of \$250.00.

- [8] The Client says that the Law Firm is not entitled to any remuneration and limited indemnification for the disbursements incurred because it wrongfully terminated the agreement.
- [9] The Law Firm submits that it was justified in terminating the agreement because the Client repeatedly refused to follow its advice. It also says that the fees charged are more than reasonable and have, in fact, been discounted. Furthermore, the Client has received monies for some, if not all, of the disbursements claimed in the Bill. It would be unfair for the Client to retain those monies when the Law Firm incurred the disbursements on Ms. Frayne's behalf.

THE RETAINER

- [10] Ms. Frayne was involved in a motor vehicle accident on March 24, 2003. As a result of the accident, she suffered soft-tissue injuries, a mild concussion and psychological injuries.
- [11] The Law Firm was retained one month after the accident. Ms. Frayne met with Mr. Pohorecky and together they reviewed the circumstances of the accident and Ms. Frayne's complaints of injuries. The agreement was also reviewed, with Mr. Pohorecky highlighting certain portions in pen.
- [12] The Law Firm proceeded to investigate Ms. Frayne's claim. A writ of summons was issued on August 25, 2004, with a statement of claim following in December of that year.
- [13] The defendants contested both liability for the accident and the nature and extent of the injuries suffered by the Client.
- [14] The defendants issued a notice requiring trial by jury. A twelve day trial was scheduled to commence on November 27, 2006.
- [15] In May 2005, the defendants delivered a notice to mediate. Mr. Pohorecky attempted to put the mediation off. He believed that it was too soon to settle the Client's claim. There were further medical investigations to pursue, particularly given the Client's complicated pre-accident medical history. As well, it is Mr. Pohorecky's experience that settlement is usually optimal closer to trial.
- [16] In the meantime, examinations for discovery took place. The defendants pursued Ms. Frayne's pre-accident medical records.

- [17] By the spring of 2005, Mr. Pohorecky concluded that Ms. Frayne's claim had some difficulties, particularly on the issue of causation for her symptoms and conditions. Pre-accident medical records noted that Ms. Frayne had been diagnosed with and treated for high blood pressure. There was a concern that some of Ms. Frayne's symptoms were attributable to this condition or to a pre-existing psychological disorder, rather than the suggested mild traumatic brain injury. Mr. Pohorecky acknowledges that the evidence "cut either way".
- [18] Some of the medical records that appeared to support the defence came from a Dr. F. who had seen Ms. Frayne before the accident. According to Dr. F.'s records, Ms. Frayne had complained of fatigue for several years preceding the accident. Various blood tests were carried out. There may have been references in his notes to psychological stresses. The Medical Services Plan records confirm the Client's various attendances to Dr. F.'s offices and referrals for diagnostic testing.
- [19] Ms. Frayne maintains that Dr. F. is perpetrating fraud with respect to her medical records. She recalls seeing him twice before the accident after suffering a fainting spell. As Ms. Frayne had no family doctor at the time, she attended a walk-in clinic. The clinic was full but the medical assistant referred her to Dr. F. who had a practice in the same building. Ms. Frayne says that she saw Dr. F. on the two occasions only. She also denies attending at labs for blood tests or any other kind of diagnostic investigation. Ms. Frayne was determined to refute the validity of Dr. F.'s records.
- [20] While he enjoyed a mostly amicable relationship with the Client, Mr. Pohorecky says that the relationship became increasingly strained as the retainer progressed. Part of the strain was the Client's position with respect to Dr. F.; other strains developed after attempts were made to settle the claim. The Client was apparently unaware of this increasing discomfort.
- [21] There were difficulties with the Client's pecuniary loss claim. Ms. Frayne is a franchisee owner of a Relax the Back store in Victoria. While a replacement worker was hired for a short period of time, the store itself did not suffer any losses following the accident. In fact, the year following the accident was the first to show a profit and that profitability increased rather than decreased as the action approached trial. Nevertheless, Ms. Frayne was insistent on presenting a significant income loss claim.
- [22] In addition to these factors, the defence alleged a failure on Ms. Frayne's part to mitigate her damages by pursuing appropriate medical treatment. Mr. Pohorecky thought there was some substance to the defendants' position. Mr. Pohorecky also advised the Client to see her treating physicians "on a regular basis" in order to establish a record of complaints and treatment. Ms. Frayne declined to follow this advice, making her own choices as to when medical advice would be pursued. She did attend at all independent medical examinations, whether those were arranged by the Law Firm or the defendants.

- [23] Mediation of the claim took place on June 5, 2006. Mr. Pohorecky explained to the Client that he would "start high" but that she should not expect settlement in the first suggested amount. Mr. Pohorecky believes that the number presented was in the range of \$800,000.
- [24] Ms. Frayne was present throughout the mediation. However, she denies ever being told the settlement figure being sought on her behalf. She recalls glancing at Mr. Pohorecky's notes of numbers, but says that the page was quickly covered up to prevent her further viewing.
- [25] The defendants' final settlement offer at mediation was \$200,000 plus costs and disbursements. Mr. Pohorecky was instructed to reject that offer and the mediation ended without settlement. Shortly thereafter, the defendants delivered an offer to settle under the Rules of Court for the sum of \$250,000 plus costs and disbursements.
- [26] Despite having some misgivings about the evidence, Mr. Pohorecky was still prepared to take the Client's claim to trial. However, he also wanted to continue settlement negotiations, believing that more monies could be had over and above the offer to settle. Mr. Pohorecky sought instructions on settlement, but Ms. Frayne declined to provide a figure; she was determined to go to trial. Mr. Pohorecky also explained the risk of a very low award from a jury; again, Ms. Frayne was willing to take her chances.
- [27] A pre-trial conference was held before Master Scarth. Both the Master and counsel believed that a judicial settlement conference might assist in resolving the claim. In Mr. Pohorecky's mind, the Client might be persuaded by the presiding judge to provide some concrete settlement instructions.
- [28] A settlement conference was scheduled but cancelled by Mr. Pohorecky when he was unable to obtain any settlement instructions. Ms. Frayne was willing to attend the conference but unwilling to participate in settlement negotiations.
- [29] Ms. Frayne reiterated to Mr. Pohorecky that she wanted the jury to decide her claim. She told him that it was "not about the money". Mr. Pohorecky believed that the Client's decisions were not rationally based.
- [30] Mr. Pohorecky was uncomfortable with the trial strategy suggested by the Client. Ms. Frayne wanted Dr. F.'s credibility attacked and asked that certain lay witnesses be called even though those witnesses did not, in Mr. Pohorecky's view, advance the case. Mr. Pohorecky refused to accept those instructions.
- [31] At some point, Mr. Pohorecky suggested to Ms. Frayne that she consider retaining other counsel. Ms. Frayne rejected this suggestion, confident in Mr. Pohorecky's ability to successfully represent her at trial.
- [32] Believing it his duty, Mr. Pohorecky continued to prepare for trial. Expert reports were served in compliance with Rule 40A.

- [33] At the end of October 2006, Mr. Pohorecky recommended to Ms. Frayne that mediation be pursued one more time. The Client rejected this suggestion. Around this same time, Ms. Frayne advised Mr. Pohorecky that she would accept \$550,000 plus costs and disbursements in settlement of her claim. The instructions were withdrawn before Mr. Pohorecky had an opportunity to relay the offer. Ms. Frayne repeated once more that she was prepared to go to trial and accept the jury's decision. Mr. Pohorecky noted at the time that the Client "does not appreciate the risk" of proceeding to trial.
- [34] The figure of \$550,000 came from the Client. At no time did Mr. Pohorecky recommend a specific figure to offer in settlement discussions. Ms. Frayne recalls that the only figure put forward by the Law Firm was the \$800,000 presented at the mediation. Mr. Pohorecky recalls that the figure of \$550,000 might have been the Client's final position at the mediation in June, 2006. In any event, it is Mr. Pohorecky's practice to let the Client decide the ultimate settlement figure.
- [35] On November 7, less than 3 weeks before the trial was to commence, Mr. Pohorecky raised the spectre of his withdrawal. He did not feel comfortable continuing to act, observing that Ms. Frayne remained completely unconcerned about the difficulties of her claim and even considered one of the defence experts to be "on her side".
- [36] While Ms. Frayne remained unconcerned about the difficulties with her claim, she accepted that the jury might find in favour of the defendants and that she might be placed in bankruptcy if that were the result.
- [37] Two days later Mr. Pohorecky again met with the Client and confirmed that he was no longer willing to act as counsel. He could no longer represent someone "who was unwilling to accept his advice". A notice of intention to act in person was presented with the assurance that Ms. Frayne would be given all of the material necessary to retain and instruct other counsel.
- [38] Ms. Frayne was stunned by the decision and became very emotional. She was too upset to read the document presented to her, but signed it anyway. She believed that the document meant that she was firing Mr. Pohorecky and not vice versa.
- [39] The following day, Ms. Frayne returned to the Law Firm's office and asked Mr. Pohorecky about the document that she had signed. Mr. Pohorecky confirmed that it was a notice of intention to act in person, and agreed to file and deliver the notice on the Client's behalf. Ms. Frayne received all of the Law Firm's file material.
- [40] That day or the next, Mr Pohorecky contacted defence counsel to advise of his withdrawal. He received a verbal assurance that the defendants would not contest an adjournment of the trial while Ms. Frayne found other counsel. That assurance was relayed by the Law Firm to the Client.
- [41] Ms. Frayne did not want to adjourn the trial, even if it meant representing herself.

- [42] The trial proceeded in November 2006, although by judge alone. Wong J. awarded Ms. Frayne the sum of \$99,415. He also found that Ms. Frayne was 10% contributorily negligent for the accident. Based on my reading of the reasons for judgment, the court attributed Ms. Frayne's psychological complaints solely to the accident, but found that there was a failure to mitigate, see *Frayne v. Alleman*, 2006 BCSC 1988.
- [43] Because the court's award was less than the offer to settle, the defendants were awarded double costs from the date of the offer's issuance. Ms. Frayne was awarded her costs to that date.
- [44] Although the retainer ended on November 9, 2006, Mr. Pohorecky assisted the Client further by preparing a bill of costs. The parties' costs were subsequently assessed by me. Ms. Frayne was found liable for the defendants' costs of some \$45,000.
- [45] In June 2007, the defendants paid the sum of \$72,600 into court. I presume that the monies represent the amount owing to Ms. Frayne after setting off the defendants' costs.
- [46] Once the monies were paid into court, the Law Firm issued its Bill. Mr. Pohorecky did not keep time records during the retainer. The Bill is, therefore, based in part on a reconstruction of the time spent. The Law Firm intends to apply for release of funds when a certificate of fees is issued in this proceeding.

DISCUSSION

- [47] The first issue to be addressed is whether the Law Firm is entitled to any remuneration as a result of terminating the agreement with the Client. If the termination is found to be valid, the registrar may determine whether the fees are fair and reasonable: *Morrison Voss v. Smith*, 2007 BCCA 296.
- [48] *Morrison Voss* is the most recent pronouncement by the Court of Appeal on the issue of when a lawyer might have reasonable grounds to terminate a contingency fee agreement. It reiterates many of the well established principles regarding a lawyer's entitlement to remuneration on the termination of a contract for fees and services. It may also have narrowed the circumstances in which such termination is deemed just and reasonable.
- [49] As stated in *Morrison Voss*, it is settled law that solicitors must have reasonable grounds for terminating an "entire contract" before completion if they still wish to be remunerated. In deciding whether the grounds are reasonable, the courts have looked to the agreement as a whole and the circumstances in which the agreement was made.

- [50] There are a various circumstances where the solicitor's termination of an agreement might be reasonable. For example, it is reasonable where the relationship between the solicitor and client is severely damaged, either because the client has spoken with or acted inappropriately towards the solicitor, questioned the solicitor's honesty or integrity, or indeed, reported the solicitor to the Law Society: see *Cluff v. Sorti*, [1991] B.C.J. No. 261; *Russell & DuMoulin v. Farrell*, [1991] B.C.J. No. 753; and *Polacik v. Symington*, 2004 BCSC 47.
- [51] In *Chagpar v. Minsos & Co.*, 1999 CarswellAlta 1116, the Alberta Court of Queen's Bench found that a refusal by the client to "respect the lawyer's advice regarding settlement" was one factor demonstrating the client's loss of confidence in the solicitor and thus a reasonable basis on which to terminate an agreement for services. However, I observe that the agreement in that case contained this specific clause:
- (a) In the event that the solicitors withdraw, for any just or reasonable cause, the client shall pay the solicitors a Fee for all legal services provided by the solicitors to the date of such withdrawal based upon the hours expended by the solicitors at their standard hourly rates plus Disbursements, Direct charges and G.S.T. If the client refuses to accept an offer of settlement recommended by the solicitors or refuses to make an offer of settlement recommended by the solicitors and the solicitors elect to withdraw by reason thereof such withdrawal shall be deemed to be for just and reasonable cause.
- [52] As well, the client's criticism of the lawyer's conduct of the case significantly contributed to the "serious breakdown" of the solicitor client relationship.
- [53] According to *Morrison Voss*, a change in the solicitor's perception of the client's credibility is not sufficient cause for termination of the agreement. Nor indeed, is the solicitor's perception of the frailties of the client's case good cause for termination.
- [54] The agreement in the *Morrison Voss* case entitled the law firm to withdraw its services "if we have good reason" and provided examples of such as "not co-operating with a reasonable request" or asking the law firm to "do something unethical or illegal". These are but examples, as the agreement did not restrict the law firm from terminating for other "good reason".
- [55] Other than the agreement itself, *Morrison Voss* has many similarities to the case before me. The client was determined to go to trial. The law firm continued preparations for trial even after the client disclosed facts which might adversely effect her claim. As the trial date neared, the solicitors pressed the client for settlement instructions, knowing that significant disbursements were about to be incurred on the client's behalf with no guarantee of success at the end of the day.

- [56] The law firm withdrew only after the client disclosed that she was not paying the rent portion of her welfare cheque to her brother with whom she was residing. The law firm decided that the arrangement amounted to "welfare fraud". The learned registrar agreed that the "late" disclosure of this information constituted good reason for the law firm's termination of the agreement, but nonetheless reduced the fees claimed.
- [57] A judge of the Supreme Court dismissed Ms. Smith's appeal of the learned registrar's decision regarding the lawful termination of the agreement.
- [58] Ms. Smith then took her case to the Court of Appeal. In reversing the finding of the learned registrar, the court found that there was no evidence of fraud or an intentionally false statement by Ms. Smith to the welfare authorities. And, while the client's credibility might be damaged, the facts disclosed were not "matters showing a level of dishonesty entitling the solicitors to terminate" that agreement: para. 50. In the context of the whole agreement between the parties, this disclosure alone did not constitute "good reason" for termination.
- [59] The Client submits that such a finding is equally applicable here. Given the "unique nature" of the solicitor/client relationship, the refusal by Ms. Frayne to engage in settlement discussions is not sufficient grounds for terminating the contract. The lawyers had a duty to carry out the terms of the contract which included going to trial: see *Morrison Voss v. Smith* at para. 51.
- [60] The Client submits that on reading the contract on the whole and considering the circumstances at the time it was entered into, there was no obligation on the part of the Client to even attempt to settle her claim before trial. The Law Firm accepted that it might not recover any fees if the action went to trial. The relevant term of the agreement is as follows:
- "I Astrid Ingrid Frayne ACKNOWLEDGE HAVING DISCUSSED my claim with MICHAEL POHORECKY and I UNDERSTAND that by his agreement to take this file on a contingent basis, there is a risk that he will receive less than his usual hourly rate for services performed, or even no fee at all, and I UNDERSTAND that he may receive more than his usual hourly rate, depending on the amount of damages proven and recovered on my behalf. (my emphasis).
- [61] Ms. Frayne's desire to proceed to trial, regardless of the outcome, was contemplated in the agreement.
- [62] The Law Firm submits that *Morrison Voss v. Smith* should be distinguished. The court was interpreting a specific term of the agreement; that is, what is the meaning of "good reason" in the context of that agreement? Furthermore, the *Morrison Voss* agreement expressly provided that the client would "make the final decisions" and that the client "may want to go to trial even though we recommend that you settle". No such provisions are found in the agreement with Ms. Frayne, nor should they be implied.

- [63] The agreement in this case provides that the Law Firm may withdraw its services in the event that the Client "refuses to follow [my] lawyer's advice". In the Law Firm's submission, the Client's unwillingness to settle her claim constitutes such a refusal. Thus, by the plain language of the contract, the Law Firm's withdrawal is justified.
- [64] Mr. Pohorecky acknowledges that the agreement anticipates no recovery of fees for the Law Firm in certain circumstances. However, he submits that those circumstances are limited, such as where investigations reveal a client to be entirely at fault for the accident. In those circumstances, the Law Firm accepts that it would not be entitled to charge the Client for services performed. It could still recover all of the disbursements incurred on the client's behalf.
- [65] The question then arises: did Ms. Frayne refuse to follow the Law Firm's advice? Or perhaps, what constitutes the refusal to follow the Law Firm's advice in the context of the whole agreement and the circumstances in which the agreement was made? see *Morrison Voss v. Smith* at para. 48.
- [66] The language of the agreement is to be considered when answering this question. In this case, the agreement provides three instances of when the law firm's withdrawal is justified. However, regardless of the specific terms of the agreement, the termination must still be shown to have been reasonable: *Maillot v. Murray Lott Law Corp.*, 2002 BCSC 343.
- [67] As well, in considering the contractual terms, it must be remembered that a contract for legal services is of a "special character" and "governed by equitable considerations which temper the application of strict contract law": *Abel v. Burke* 2000 BCCA 284. Furthermore, if there is any ambiguity in a term of the contract, it should be read contra preferentum to the Law Firm: *Chagpar v. Minsos & Co.* at para. 18.
- [68] The special nature of contingency fee agreements was commented on by Sigurdson J in *Anderson v. Elliott*, [1998] B.C.J. 2592, at paras. 65 to 68:

At common law, contingent fee agreements were illegal for being champertous. It had long been the case that a person was not permitted to assist or promote another's lawsuit in consideration of sharing in the proceeds of that suit.

Since 1969, contingent fee agreements have been permitted in British Columbia but restrictions have been created to avoid the possible abuse of these types of retainers, including a limit on the amount of remuneration to which a lawyer is entitled under the agreement and a right of review by the registrar.

Under a contingent fee agreement, the lawyer and the client enter a type of joint venture where they will either share in the fruits of the action or suffer the defeat together. Normally, I would expect that it is not a joint venture of equals, in that the law firm, generally, has a more thorough understanding of the law, the legal process and the potential outcomes of litigation than the client.

But this imbalance is tempered by the fact that the relationship is a fiduciary one; the law firm owes a number of duties to their client, not the least of which is the duty to act only in their client's best interests.

- [69] The court went on to say that, while a contingency fee agreement may include a clause that allows for payment of fees upon termination, such a clause may be considered unreasonable if it shifts the "relationship from solicitor client in a co-venture to one where the client bears a substantially greater risk": para. 90. The provision under consideration in that case gave the solicitor the right to withdraw for any reason whatsoever.
- [70] The Law Firm's advice to Ms. Frayne was to engage in settlement discussions. That advice was given repeatedly but never in writing. Nor did the Law Firm offer specific advice on the terms of settlement. While agreeing to relay the offer of \$550,000, the Law Firm did not advise the Client to accept or make a certain offer of settlement. The Law Firm left it to the Client to decide on a figure, despite the Client's repeated statements that she wished to have her day in court.
- [71] In my view, the unwillingness by the Client to engage in settlement discussions does not equate to the Client refusing to follow the Law Firm's advice.
- [72] I agree with the Client that under the terms of the agreement, the Law Firm accepted that it might not recover any fees if the matter proceeded to trial. In providing for a range of recovery of its fees, the Law Firm recognized that the Client may not wish to settle. It accepted that the Client may choose to have her day in court.
- [73] The Law Firm agreed to represent Ms. Frayne on a contingent basis. That meant that the result of the retainer was "possible, but not assured; doubtful or uncertain" and "conditional on an event that may or may not occur": Black's Law Dictionary, 8TH Ed. To withdraw only because the lawyer no longer thought it is prudent to risk this uncertainty is neither just nor reasonable.
- [74] To paraphrase Sigurdson J., the Client and the Law Firm's joint venture was to prosecute Ms. Frayne's claim. It was contemplated that the prosecution would lead to a trial. To condone termination of the agreement because the Law Firm wishes to settle, puts all of the power in the joint venture in the hands of the lawyer.
- [75] I also find that it is an implied term of the contingency fee agreement that the Client, not the Law Firm, decides on a settlement amount. Indeed, that is the manner in which the Law Firm operated during the agreement.
- [76] No other justifications are given for terminating the agreement. Frailties in the Client's claim do not provide justification. It is not unusual for a client and lawyer to differ on strategies or perception of the evidence. Here, Mr. Pohorecky stated that he would not be following the Client's instructions on such matters.

- [77] The Client's behaviour and attitude towards Mr. Pohorecky did not change during the retainer. There were no words or actions which suggest Ms. Frayne challenged Mr. Pohorecky's integrity and honesty. Nor does the Law Firm suggest that Ms. Frayne ever provided faulty information.
- [78] In summary, I find that the termination of the agreement by the Law Firm was not reasonable. It follows that the Law Firm is not entitled to any fees.
- [79] The question of disbursements is another matter. The agreement is clear that the Client is responsible for the disbursements. The Law Firm says that all of the disbursements incurred were necessary and proper; the Client did not prove otherwise. Nor did the Client demonstrate that the amounts charged are unreasonable. Accordingly, the Client is to pay the Law Firm for all of the disbursements claimed in the Bill.
- [80] With respect to interest, the Law Firm waives its contractual claim of 10% on the outstanding disbursements. It is entitled to court order interest on those charges.
- [81] That leaves the question of costs. The Bill has been reduced by more than 1/6th. Absent special circumstances, the Client is entitled to her costs for this review: s. 72 of the Act.
- [82] Special circumstances may exist and the amount of costs may be in issue. Therefore, the parties are at liberty to provide written submissions of those matters. The submissions should be delivered to Trial Division by 5:00 p.m. on November 19, 2007. If the parties reach an agreement before that date, the Law Firm may submit a certificate of fees with the interest calculation attached for my endorsement.

"C. P. Bouck"

D/Registrar C.P. Bouck

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