

CANADA / JUDGMENT

Preston Clark McLeod v. 389629 BC Ltd.

2012 BCSC 1035

COURT

Supreme Court of British Columbia

DECIDED

12 July 2012

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2012 BCSC 1035 Preston Clark McLeod v. 389629 BC Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Preston Clark McLeod v. 389629 BC Ltd.,

2012 BCSC 1035

Date: 20120712

Docket: S121573

Registry: Vancouver

Between:

Preston Clark McLeod

Lawyer

And

389629 BC Ltd.

Roger Abou-Rached

Client

Before: Master McDiarmid

Reasons for Judgment

Counsel for the Lawyer:

B.B. Clark

Roger Abou-Rached appeared on his own behalf and as agent for 389629 BC Ltd.:

Place and Date of Hearing:

Vancouver, B.C.

March 26, April 24 and 25, 2012

Place and Date of Judgment:

Vancouver, B.C.

July 12, 2012

- [1] This is a review of the bill of Preston Clark McLeod (the "Lawyer") for services rendered in their file no. 1281. The "Re" line on their account states "389629 BC Ltd. v. Fanuc Robotics Canada Inc."
- [2] At the commencement of the hearing to review the Lawyer's bill, Roger Abou-Rached confirmed that he received a signed copy of the Lawyer's account dated February 10, 2011 [sic] which was attached to the appointment.
- [3] The account detailed 56.6 hours of time charged at \$225.00 per hour for total fees charged of \$12,735.00, together with two disbursements totalling \$72.50, HST in the amount of 12% totalling \$1,536.90, and the statement "Outstanding on previous account \$3,349.00." The total claimed to be due and owing was \$17,693.40.
- [4] A copy of the account was introduced into the proceedings as exhibit 3. That document detailed the 56.6 hours charged, commencing with entries for professional services rendered on September 15, 2011, and concluding with 5.5 hours of professional services rendered on February 1, 2012.
- [5] There were two issues before me.
- [6] The first is whether the account was rendered to Roger Abou-Rached. There was no issue about the account being rendered to 389629 BC Ltd. However, Mr. Abou-Rached argued that 389629 BC Ltd. was the only client.
- [7] In addition, Mr. Abou-Rached, on behalf of 389629 BC Ltd., submitted that in considering all of the circumstances, including those set out in s. 71(4)(a)-(h) of the LPA, I should significantly reduce the fees. He submits that in his submission of defendants, paragraphs a, j and k, that the total fees should have been no more than the initial fee estimate of \$5,000.00 to \$3,000.00, and that fees paid in excess of that estimate should be refunded.

Factual Background

- [8] In 2007, 389629 BC Ltd. was the registered owner of certain property located at 10660 Speen Road, in Surrey, British Columbia. Exhibit 11 in the proceedings before me is an affidavit of Mr. Abou-Rached sworn June 7, 2007 in the Supreme Court of British Columbia Action No. S074085, Vancouver Registry. In paragraph 3 of his affidavit he deposes to the legal

description of the lands, and he attaches a title search print dated June 12, 2007. That title search print shows the lands encumbered by several charges, including in particular mortgage BP292897, wherein International Hi-Tech Industries Inc. ("IHI") is shown as a mortgagee having priority after a mortgage, an extension of mortgage, and an extension of assignment of rents; all in favour of CIBC Mortgage Corporation. The lands have other encumbrances, including in particular judgment BB4568865 and certificate of pending litigation ("CPL") BB56985 in favour of Fanuc Robotics Canada Ltd. ("Fanuc").

- [9] According to paragraph 16 of the Roger Abou-Rached affidavit sworn June 12, 2007, in about April 2007, 389629 BC Ltd. received and accepted an offer to purchase the lands for the sum of \$1,120,000.00 from Her Majesty the Queen in Right of the Province of British Columbia. The sale was scheduled to close on June 29, 2007.
- [10] The judgment and CPL of Fanuc was not a charge against the fee-simple interest of 389629 BC Ltd., but rather was a charge against the interest of IHI as mortgagee.
- [11] 389629 BC Ltd. took the position that nothing was owing by it to IHI, and thus Fanuc's claim was worthless. In order to permit the sale of the lands to complete, the parties agreed to place the sum of \$630,000.00 in the trust account of then counsel for 389629 BC Ltd., Davis & Company. IHI became bankrupt. The funds held by Davis & Company, plus accumulated interest, were paid to the trustee in bankruptcy for IHI, Boale Wood & Company.
- [12] Prior to becoming bankrupt, IHI provided a general security agreement against all of its assets, including, if IHI was entitled to it, the mortgage registered against the lands. The general security agreement was placed in evidence as part of exhibit 15. It is stated on its face to be made effective December 15, 2001, granted by IHI Holdings Ltd., which at the time had an address in Hamilton, Bermuda. The secured parties were Garmeco International Consulting Engineers S.A.L., with an address in Beirut, Lebanon, Garmeco Canada International Consulting Engineers Ltd., with an address in Vancouver, British Columbia, IHI Holdings Ltd., with an address in Vancouver, British Columbia, and Earthquake Resistant Structures Delaware, USA, with an address in New York City, USA (the "Garmeco companies"). The submissions in evidence confirm that the Garmeco companies are apparently controlled by Mr. Abou-Rached's mother. At all times material, the Garmeco companies were represented by a British Columbia lawyer, Andrew Sandilands.
- [13] The Garmeco companies, IHI and 389629 BC Ltd. appear to have connected or overlapping directorships. It is beyond the scope of the Legal Profession Act, S.B.C. 1998, c. 9 [LPA] review for me to determine whether they are at arm's length from each other, but it was apparent from the testimony that there is some overlapping of directors and/or officers. In particular, it would appear that any monies which would be collected by 389629 BC Ltd. would ultimately flow through to the benefit of Mr. Abou-Rached's mother.

- [14] In January of 2011, the trustee of IHI reviewed the various claims against IHI's assets. The trustee was satisfied that the Garmeco companies' security (which secured advances of approximately \$4.5 million, to which a claim for interest was added of approximately \$1.7 million) left no equity available to the bankrupt's estate in relation to the \$630,000.00, plus interest, which the trustee's lawyer referred to as the "Davis funds".
- [15] Mr. Sandilands, on behalf of Garmeco, requested release of the Davis funds. They had been paid into court pursuant to an order of Mr. Justice Silverman in Action No. S074085 which provided that the funds could not be paid out by the trustee without the consent of Fanuc, or by court order. Mr. Sandilands was of the view that there was a potential conflict between his clients, the Garmeco companies who held the general security agreement and 389629 BC Ltd. Mr. Sandilands advised Mr. Abou-Rached to retain counsel to pursue a court application to have the funds paid out to 389629 BC Ltd.
- [16] On or about February 7, 2011, 389629 BC Ltd. retained Bruce Clark of Preston Clark McLeod pursuant to the relevant provisions of the LPA.
- [17] Mr. Clark was provided with much of the background materials, including a draft notice of application and draft affidavits. He finalized the notice of application and supporting affidavit of Douglas Bencze, an accountant and internal auditor of 389629 BC Ltd., and filed them on February 24, 2011, returnable March 31, 2011.
- [18] When the application came on for hearing on March 31, 2011, Mr. Kieran Siddall, representing General Electric Capital Inc. ("GE"), a creditor of IHI, attended in court. GE, as a creditor of IHI, was entitled to standing in the bankruptcy proceedings. Mr. Siddall sought an adjournment for the purpose of completing a cross-examination of Mr. Abou-Rached in the bankruptcy proceedings.
- [19] The March 31, 2011 hearing was adjourned. Mr. Abou-Rached was cross-examined on June 27, 2011 in the bankruptcy proceedings.
- [20] The application for payment out of the Davis funds came on for hearing January 24, 2012 before Madam Justice Dillon. Mr. Siddall appeared again and sought an adjournment to obtain standing in Action No. S074085.
- [21] Following the adjournment in front of Madam Justice Dillon on January 24, 2012, further preparation was done and the matter came on for hearing before Mr. Justice Groves on February 1, 2012.
- [22] Much of the evidence before me, over the three days that this LPA review was heard, had to do with the chances of success of 389629 BC Ltd.'s application. Much of the evidence before me had virtually nothing to do with the issues I was to decide. In part, that was due to Mr. Abou-Rached who, in representing himself and 389629 BC Ltd., had considerable difficulty in separating the issue of success in the claim to the Davis funds from the matter before me.

- [23] Mr. Abou-Rached testified and argued that his instructions to Mr. Clark were clear, that Mr. Clark essentially ignored those instructions, embarked on a frolic of his own in agreeing to the March 31 adjournment, and (according to Mr. Abou-Rached) took a passive approach when the hearing came on on January 24, 2012 in front of Madam Justice Dillon.
- [24] The transcript of the proceedings before Madam Justice Dillon was placed into evidence. From that transcript it is apparent that Mr. Clark attempted to proceed with the application. He properly conceded that he had not opposed the adjournment, nor raised any standing issues on March 31, 2011.
- [25] From my view of the materials presented (there were 15 exhibits, including a transcript of an examination in aid of execution of Mr. Abou-Rached where he was examined by judgment creditors, affidavits which detailed why there was no monies owing to IHI by 389629 BC Ltd., and other detailed evidence), it was apparent that although the application was at first supported by a brief one-page affidavit, the evidence required to demonstrate that IHI owed no money to 389629 BC Ltd. required presentation of significant additional evidence to that which was initially contemplated.
- [26] I heard evidence about the initial retainer, subsequent accounts, and what was paid.
- [27] At the time of the initial retainer, Mr. Clark told Mr. Abou-Rached and Mr. Bencze that he estimated the cost in proceeding with the application he was retained to prosecute would be about \$3,000.00. His testimony, on cross-examination, confirmed that he received sufficient materials from Mr. Sandilands to understand what was happening in the case and what the case was about. He was then asked:

Q ... And it was enough for you to also give us a quote?

A I don't give quotes.

Q Exhibit --

A I gave you an estimate.

Q You gave me a fixed quote.

A No.

...

Q How much you gave me, the estimate? You call it estimate; I call it quote, fixed quote.

A I think I estimated it would cost about \$3,000, and I asked for a retainer of something more than that. I'll have to check and see how much of a retainer you gave me, but that's where it was.

Q So if I refresh your memory and tell you you told me it would cost \$2- to \$3,000 and the max 2,000, the minimum -- the max 3,000, the minimum 2,000, so from 2- to 3-. But the policy of your firm is to ask for a minimum retainer of \$5,000 for such a case because 389629 has no assets other than the 630,000 that's locked in court. And -- well, let's start with that one first. Do you recall that or not?

A I'm not what you're acting -- asking me.

THE COURT: As I understood his question, that -- it was that you estimated that it would cost \$2,000 to \$3,000, but that you wanted a retainer of \$5,000 because the numbered company had no assets, and that was a firm policy. As I understand it, that's the question.

MR. CLARK: I think that is probably the case.

[28] Although the exact words differed when Mr. Abou-Rached and Mr. Bencze testified, the gist of what was said is confirmed by their testimony.

[29] It is apparent from the evidence that prior to March 31, 2011, Mr. Abou-Rached was aware that GE was actively participating in the bankruptcy proceedings and would be resisting the payment out of the Davis funds to 389629 BC Ltd. Testimony from the witnesses confirms that Mr. Clark accompanied Mr. Abou-Rached to the cross-examination of Mr. Abou-Rached in the bankruptcy proceedings. A transcript (part of exhibit 15) shows that the cross-examination on June 27, 2011 commenced at 2 p.m. and adjourned at 4:39 p.m. Also placed in evidence before me as exhibit 8 was an affidavit of Mr. Abou-Rached sworn January 23, 2012. The exhibits to the affidavit were not placed before me. It is apparent from a review of exhibit 8 that significantly more preparation work was required to be done by Mr. Clark in order to prepare for the hearing which was reset for January 24, 2012. It is apparent from Mr. Abou-Rached signing the affidavit that he was well aware that significant additional work over and above the initial estimate was being done and was necessary.

[30] At the hearing before Mr. Justice Groves on February 1, 2012, GE was granted leave to proceed in the place of IHI's trustee pursuant to s. 38 of the Bankruptcy Act. At about that time, Mr. Abou-Rached decided that he would focus on recovering the Davis funds through the Garmeco companies' security rights.

[31] At that point, Mr. Clark became concerned about how he was going to get paid. Testimony confirms that on or about February 3, 2012, Mr. Clark drafted a retainer agreement. The relevant testimony is as follows:

MR. CLARK: -- the creditors, they can bring on an application. They can do it in his stead. So GE was seeking leave to bring on a section 38 application at the same time as they were seeking an order that they be added as a party to this matter. They were both set at the same time. The section 38 application took the whole morning, and the -- in the afternoon we were going to get to -- actually there was three things that was going to be heard: the application to add them as a party -- it was the three things: the section 38 application, the application -- their application to be added as a party, and finally, my application to have the matter -- have the funds paid out. In

other words, for a hearing of the whole issue --

THE COURT: M'mm-hmm.

MR. CLARK: -- on its merits.

THE COURT: Okay.

MR. CLARK: The section 38 application took the whole morning, and the afternoon was going to be the merit application and the adding as a party, but at that point, Mr. Abou-Rached instructed me to tell the court that he was just going to rely -- try to get this money through Garmeco and the bankruptcy proceedings and would be -- not be seeking to continue with the numbered company's application, which I then did.

He subsequently changed his mind, but GE's counsel told me that they were going to oppose us continuing on behalf of the numbered company, and that that's where things stopped. Mr. Abou-Rached at that point dismissed me as counsel, and that's where we are.

...

Q Now, number 4 or 5 of the same thing, do you recall when you told me the reason we don't have a retainer agreement because it's a simple matter? It's just -- we're going there for one application; you're going to win; it's [a] simple matter, and I already paid more than the \$2- to \$3,000, so there's no need for a retainer agreement. And --

THE COURT: Okay. Just --

MR. ABOU-RACHED:

Q Do you recall that?

THE COURT: Yeah, go ahead.

MR. CLARK: I don't recall telling you that, but I can testify that I generally -- more often than not I get written retainer agreements, and the reason I didn't get one in your case is because it looked like it was going to be a quick in/out. And I was so tied up with preparing for the actual hearing in the matter that I never did a retainer agreement.

MR. ABOU-RACHED: No, no. No, Your Honour, it's not that. On the same thing, he said -- he just testified under oath that he was so busy to -- a year ago to do a retainer agreement just strictly to 389629 --

THE COURT: Yeah.

MR. ABOU-RACHED: And then on February 3rd, 2012, about -- a little bit more than a year later, he had all the time in the world to fabricate the retainer agreement -- and I'll give you a copy of that, Your Honour, next time -- and he included -- he typed up my mother, her companies --

THE COURT: Oh, I see.

MR. ABOU-RACHED: -- everybody to pay the thing, eh?

THE COURT: So just --

MR. ABOU-RACHED: That's not consistent with how we hired him and why we hired him.

THE COURT: So just so that I'm clear, then, what you're being asked is that -- did -- last month, I guess; yeah, we're still in March -- did you prepare a retainer agreement for this matter and in it include a number of parties other than the numbered company?

MR. CLARK: Yes.

THE COURT: I think that's what he's asking.

MR. CLARK: Yes.

MR. ABOU-RACHED: Yeah.

...

MR. CLARK: I'll explain to you, Mr. Abou-Rached, about that draft -- the draft retainer agreement I provided to you.

MR. ABOU-RACHED: It was not draft.

A It's after we appeared before Mr. Justice Groves on the hearing on which there were three matters scheduled: one was the section 38 application of GE --

THE COURT: Right. I have what those three are --

MR. ABOU-RACHED: Yeah.

THE COURT: Okay? Yeah.

MR. ABOU-RACHED: Your Honour --

THE COURT: Just -- no, let him answer. Let him answer. He's getting there.

MR. ABOU-RACHED: Yeah.

THE COURT: Go ahead.

MR. CLARK: And at the beginning of the afternoon's hearing, Mr. Abou-Rached told me that he was going to withdraw the application of the numbered company and just try and receive his money through the Garmeco --

THE COURT: Right. You've given that evidence before. Okay.

MR. CLARK: -- GSA. So at that point I became alarmed because my security -- the only security was the money that was held on behalf of the numbered company, and he was talking about withdrawing it, which would at that point leave me with no security for any funds. I told him that I was prepared to continue acting for him, but I needed some security which came from more than just that numbered company because he could -- he hadn't suggested and later withdrawn

the idea that the numbered company just drop out. So I said if you want me to continue, you'll have to sign a retainer agreement, so -- which other parties that have some can -- that you control that have some claim on those funds will have to sign.

MR. ABOU-RACHED: The --

MR. CLARK: And he refused to sign it, and that was the end of our relationship.

[32] From this I conclude that when Mr. Clark determined that 389629 BC Ltd. was not going to be the recipient of the Davis funds, the client having chosen to pursue accessing those funds through the Garmeco companies' security agreement, Mr. Clark endeavoured to obtain a written retainer agreement which would have made other parties responsible for the accounts owing to 389629 BC Ltd.

[33] Placed in evidence before me were copies of the three accounts rendered by the Lawyer.

[34] The first, dated April 6, 2011, totalled \$4,144.41 which was paid from monies in trust. This account states "IN ACCOUNT WITH 389629 B.C. LTD (Abou-Rached)".

[35] The account attached to the appointment was presented to the court by Mr. Clark. In his testimony, he stated in response to questioning by me:

THE COURT: E-c-o. All right. It looks to me like there's a further account here that I need to see, because the account here talks about a previous account owing of \$3,349.

MR. CLARK: I think, Your Honour, that that was outstanding on the first account.

THE COURT: You told me that the -- that there was \$5,000 paid into trust, and the account says "paid from trust" and shows a balance due of nothing, so --

MR. CLARK: Yeah. I'm sorry. That --

THE COURT: -- that's not --

MR. CLARK: There must be another account in my --

THE COURT: That's not likely.

MR. CLARK: I'm sorry. I forgot to run that off, or I didn't see it.

THE COURT: And you don't have time records with respect to it?

MR. CLARK: No, I'm afraid I don't.

THE COURT: And how much time was expended with respect to the first account of \$3,600?

MR. CLARK: That's \$225 an hour, reduced, I believe, a little bit.

THE COURT: Okay.

MR. CLARK: But I'm prepared to -- That \$3,349, if it's a problem, I'll dispense with it.

[36] Exhibit 3, which is a copy of the account attached to the appointment, states "IN ACCOUNT WITH 389629 B.C. LTD/Roger Abou-Rached".

[37] Douglas Bencze testified for the client. He testified he was present when the initial fee estimate was given and gave evidence somewhat consistent with that provided by Mr. Clark. The problem with most of his evidence was that it was elicited in-chief, but through leading questions. For example, when asked in effect who Mr. Clark's client was, the exchange was as follows:

MR. ABOU-RACHED:

Q Do you remember that I told Mr. Clark that the numbered company is his client and I am the contact person, as president of the company?

A Yes, I remember that. I remember that you spoke to him about who was the client and it was confirmed because it was on the documentation. It was on the affidavits I was going to be signing and that you were simply the contact person.

[38] I can place little weight on that testimony because it was preceded by a leading question.

[39] Mr. Abou-Rached testified. His testimony was that the client was 389629 BC Ltd., and not him personally. His evidence was to the effect that while he was the president of the company, he did not own shares in the company and was not a director. He also testified that the initial \$5,000.00 retainer was provided by his mother on her credit card. In cross-examination by Mr. Clark, Mr. Abou-Rached confirmed that an additional \$3,800.00 was paid to the Lawyer. The relevant testimony is as follows:

Q Why did you pay me 8,400?

A I paid you your sum because you were crying and waiting in -- in court and you have -- you told me you have no -- no pension and you have two children at school and whatever in college and all these things, so I told [you] I'll pay you for waiting, but that's outside the retainer, and I paid you 1,000 from different companies, one from Manufacturing, one from my personal credit card and one from my -- another credit card, my mother, just to distribute the costs in order to help.

[40] That question and answer cuts two ways. It confirms that Mr. Abou-Rached, on behalf of 389629 BC Ltd., was aware that the legal work needing to be done had become far more complex than was initially anticipated. However, it also confirms that the account was paid from a variety of sources, primarily Mr. Abou-Rached's mother, and not primarily by Mr. Abou-Rached personally.

[41] Based on the evidence I have referred to here, in particular the evidence of Mr. Clark requiring a \$5,000.00 retainer, and the evidence that when it became apparent that the direction for recovery of the Davis funds had changed, a different retainer agreement would be needed, I am satisfied that the client for the purposes of this review is 389629 BC Ltd. and not Mr. Abou-Rached.

[42] In considering all of the circumstances, including those enumerated in s. 71(4)(a)-(h), I find as follows:

- a) While initially presented as somewhat straightforward, it became apparent that the issues involved were complex and difficult. The affidavit of Mr. Abou-Rached filed January 24, 2012, and the instructions he gave in preparation for that affidavit, which was filed as exhibit 14, confirm this;
- b) Mr. Clark has skill and some specialized knowledge in the area of insolvency;
- c) While Mr. Clark was not the initial lawyer recommended to 389629 BC Ltd. by Mr. Sandilands, there was evidence that he was referred by another experienced commercial litigator. Accordingly, it is apparent that Mr. Clark has a reputation for good character in the profession;
- d) The amount involved, \$630,000.00, plus accrued interest, is a significant sum;
- e) Some of the time billed appears excessive. Mr. Abou-Rached pointed out some of this in cross-examination and submissions. The entire chargeable time controlled journal was placed before me as exhibit 4. It has a detailed time record.

As noted, the Lawyer has agreed not to claim any of the balance on the September 13, 2011 account. That account initially had a balance due of \$5,329.02, was partially paid, and had a balance remaining of \$3,349.00. The Lawyer has agreed to waive claim to that amount. A waiver of claim to that amount satisfies me that the remainder of time claimed for and billed is reasonable;

- f) Given Mr. Clark's seniority, his rate of \$225.00 per hour is reasonable;
- g) The matter was obviously important to the client because of the amount involved; and
- h) The result obtained was not good, and in fact the client is no further ahead in collecting the funds than it was when it retained the Lawyer, almost one and one-half years ago. The Davis funds remain in trust. The application to have them paid out has not been heard.

[43] If the \$3,349.00 is deducted from the total claimed to be due and owing, the amount in issue is \$14,344.40.

[44] The failure to advance the client's claim is a significant factor. I do not accept the client's submission that Mr. Clark did not follow instructions. From the way this matter proceeded, I find that the client was aware at every step of the proceeding what was going on, and was actively involved in the litigation. However, the litigation was not advanced.

[45] Mr. Abou-Rached suggests that Mr. Clark was unprofessional and/or negligent. Mr. Abou-Rached provided me with two cases: *McRae v. Johnston & Co.*, 2001 BCSC 946 and *Law Society of Upper Canada v. Barnabe*, 2008 ONLSHP 94. The first case was a decision of Master Doolan. The issue in that case had nothing to do with the issues before me.

- [46] Law Society of Upper Canada v. Barnabe was the hearing of a citation conducted by the Law Society of Upper Canada alleging that the lawyer breached summary orders, professional conduct rules, by-laws, a section of the Law Society Act, and had his lawyer's license revoked (in British Columbia we would have said "was disbarred"). That case is irrelevant to the issues before me.
- [47] Mr. Abou-Rached also provided me with extracts from the Law Society of Upper Canada Rules of Professional Conduct. Those rules are similar to the Professional Conduct Handbook of the Law Society of British Columbia, although they are not identical. They are of no assistance to me in this review.
- [48] I am familiar with the Professional Conduct Handbook. I heard no evidence which would suggest to me that Mr. Clark was in breach of any of its provisions, or acted in any way unprofessionally.
- [49] In construing the initial fee estimate, where a lawyer's retainer has not been reduced to writing, the court should not strain to resolve ambiguities about the scope of the retainer in favour of the lawyer over the client. I accept that an estimate is not necessarily a fixed price quote, but where an estimate does not fix the price, it will nonetheless be a significant factor for consideration in determining what fee is payable.
- [50] In this case, Mr. Clark did work beyond what was initially contemplated by the estimate. The amount of work increased significantly because of the initially unanticipated opposition to the application. Significantly more work was needed to be done once IHI's judgment creditors commenced actively questioning the assertion that there was no money owing by IHI to 389629 BC Ltd.
- [51] Taking all of the matters into consideration, I allow fees in the amount of \$10,735.00, disbursements in the amount of \$72.50, and HST on that amount in the amount of \$1,296.90 for a total of \$12,104.40; that is a reduction of \$2,240.00 from what was claimed at the hearing, but that is a reduction of \$5,589.00 from what was initially claimed on the bill served with the appointment.
- [52] I am mindful of the provisions of s. 72 of the LPA. In my view, there are special circumstances here which warrant no order as to costs. These circumstances are as follows:
- a) the claim against Mr. Abou-Rached was dismissed;
 - b) compared to what was initially claimed, more than one-sixth of the bill has been subtracted, but compared to what was in issue early in the hearing, less than one-sixth of the bill was subtracted;

- c) the parties, and in particular, Mr. Abou-Rached, focused on the issues in the litigation, instead of focusing on the issues before me on this review. This review, which extended over three half days of court time, and was concluded with written submissions, should have been completed in one-half day. Most of the fault for that lies with Mr. Abou-Rached, who was argumentative and unresponsive in cross-examination, and generally unfocused throughout the review.

[53] In the circumstances, there will be no orders as to costs.

"Master R.W. McDiarmid"

MASTER McDIARMID

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