

CANADA / JUDGMENT

Veszely v. Blair

2002 BCSC 1795

COURT

Supreme Court of British Columbia

DECIDED

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2002BCSC1795

Citation:	Veszely v. Mair Jensen Blair
Date:	20021224 2002 BCSC 1795
Docket:	32913 Registry: Kamloops IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	LAUREL VESZELY PLAINTIFF
AND:	MAIR JENSEN BLAIR DEFENDANT

REASONS FOR JUDGMENT

OF

MASTER GROVES

Counsel for the Plaintiff

J.A. Zak

Counsel for the Defendants

B. Carter

Date and Place of Hearing/Trial:

June 21, 2002

September 18, 2002&

November 22, 2002

Kamloops, BC

[1] This review pursuant to the provisions of the Legal Professions Act involves one bill dated August 20, 1998 rendered by the law firm of Mair Jensen Blair, the responsible lawyer being Michael Ernest Vannier ("Vannier"), to the client, Laurel Veszely.

[2] The breakdown of this account is as follows:

Fees:

\$18,514.00

GST on Fees:

\$ 1,295.98

PST on Fees:

\$ 1,295.98

Taxable Disbursements:

\$ 8,779.89

Taxes on Disbursements:

\$ 617.39

Non-taxable Disbursements:

\$ 301.83

TOTAL:

\$30,805.07

The fee has been calculated based on the provisions of a fee agreement purportedly entered into between the law firm of Mair Jensen Blair ("MJB") and Laurel Veszely ("Laurel") on the 11th August, 1997.

[3] Vannier was retained initially by Mr. Frank Veszely on behalf of his daughter, Laurel. The service of Vannier and MJB were terminated on or about the 13th August, 1998.

[4] This fee agreement was a contingency fee agreement which had the following provisions as to early termination:

It is further agreed that if, during the course of this action, the client changes solicitor, the client will pay immediately to MJB its fees, disbursements and taxes for professional services rendered by it on this file to the date of discharge. These professional services will be billed by MJB to the date of its discharge at the rate of \$175.00 an hour for the lawyer's fees and \$75.00 an hour for

para-legal and legal assistant's fees. It is understood that this account may be taxed before the Registrar of the Supreme Court of British Columbia pursuant to s.71 and 78 of the Legal Profession Act, R.S.B.C. 1979 within twelve months from the date upon which a bill for such services rendered is delivered or sent to the client.

[5] Based on the agreement, the breakdown of the calculation of fees is as follows:

\$\$ PER HOUR:

TIME SPENT:

Michael Vannier

\$175.00

66.7 hours

Dale Osborne

\$175.00

.7 hours

Sherry Donegan

\$175.00

.3 hours

Darren Paulson

\$ 75.00

(Articled Student)

1.6 hours

Para-legals

\$ 75.00

75.5 hours

Word processors

\$ 40.00

22.1 hours

There was 67.7 hours of lawyers' time expended, 1.6 hours of student hours expended, 75.5 of legal assistant time expended, and 22.1 hours of word processing expended.

[6] The lawyers' time was all billed at \$175.00, the articled student and para-legal time at \$75.00 an hour, and the word processing time at \$40.00 an hour.

- [7] There was a total of 166.9 hours expended by the law firm of MJB according to the evidence provided.
- [8] Vannier, formerly a partner at MJB, gave evidence on behalf of the solicitors. Vannier indicated that he first met with Laurel's parents, Mr. and Mrs. Veszely, after Laurel had been involved in a motor vehicle accident. As it turns out, this was a catastrophic motor vehicle accident. Laurel was struck in the early evening of June 30, 1997 by a fast moving vehicle on an unlit road on the Kamloops Indian Band Reserve. She was immediately hospitalized and was in a coma for ten days. It is during her initial hospitalization that Mr. and Mrs. Veszely contacted Vannier. It became apparent at the first meeting that liability or contributory negligence would be a crucial aspect to this case. Vannier stated he determined that it was important to find out what happened as early as possible.
- [9] After being approached by Mr. and Mrs. Veszely, Vannier immediately contacted Larry Grant, a private investigator in Kamloops, to assist him in the investigation. Mr. Grant had already been retained by the Insurance Corporation of British Columbia, who was the insurer of the defendant in these proceedings. Vannier then contacted Larrie Riddell of Kamloops, who he viewed as an experienced investigator, someone he has used in motor vehicle matters before.
- [10] Vannier testified that he considered Larrie Riddell to be very experienced and that he used her work product, and that she did good work.
- [11] While Laurel was clearly incapacitated, Vannier purported to enter into a contingency fee agreement with her, as noted, on the 11th August, 1997. This was the first occasion that he had met her; the instructions for his work, to that date, coming from Mr. Veszely. Vannier testified that he understood at this stage that this was a significant brain injury, and Laurel was obviously suffering from significant cognitive difficulties. Vannier testified that Laurel appeared to understand what Vannier told her, but as circumstances would turn out, this is clearly not the case.
- [12] In regards to the actions taken by Vannier on behalf of Laurel, his evidence was that there were a number of initial concerns noted by him and he acted on those concerns. First and foremost, Vannier stated that he undertook to deal with the issue of liability. As noted earlier, Larrie Riddell was retained, a person Vannier considered an experienced investigator. In turn, Larrie Riddell retained the services of Don Le Comte, of Pacific Rim Accident Reconstruction Ltd., to provide accident reconstruction evidence as to this accident. A number of reports were prepared by Mr. Le Comte and Ms. Riddell conducted a number of investigations, including interviewing witnesses.
- [13] Additionally, on the liability side, the R.C.M.P. records were obtained, including their report on the accident which was not favourable to Laurel's position in the litigation.

- [14] On the quantum side of the matter, medical records were received and reviewed by Vannier. These include the Royal Inland Hospital reports, as well as the clinical notes of Dr. Cleland, Dr. Porter, Dr. Brownley, Dr. Calder, as well as occupational therapists and records of the rehabilitation therapist. Vannier testified that he reviewed all these documents and made notes, as well as providing these materials to the various para-legals in his office who worked with him on the file to organize the file and summarize the contents of reports.
- [15] In addition to this work and conduct of the file generally, Vannier testified that he had a number of telephone conversations with Mr. Veszely, as well as a number of meetings with Mr. Veszely, his wife and with Laurel. Additionally, he corresponded with the doctors, the Insurance Corporation of British Columbia ("I.C.B.C.") their lawyers and representatives, as was required.
- [16] Vannier came to the conclusion that I.C.B.C., who represented the defendant, intended to make a "serious run" at liability. Vannier's view was that I.C.B.C. could not minimize the seriousness of the injury and that they would try to reduce their liability by relying on a contributory negligence defence. Vannier testified that his strategy in handling the file was to deal with the issue of liability first, and "wrap that up" as soon as possible, and that the retaining of an investigator and an accident reconstruction specialist was a good idea.
- [17] This was particularly true in light of what the R.C.M.P.'s preliminary determination on the criminal investigation concluded. The R.C.M.P.'s records suggested that Laurel may have been in the middle of the road when the accident occurred, and that would obviously favour I.C.B.C.'s position that she was contributorily negligent to the accident.
- [18] In addition to the conduct of the file as described above, Vannier indicated it was necessary for him to take out a Rule 28 application to examine Mr. Tweedy, who was Laurel's boyfriend at the time of the accident. He was the only one who was a witness to the accident, or perhaps better described as a partial witness to the accident, and he appears, from Vannier's testimony, to have been somewhat less than co-operative for reasons which were not explained.
- [19] Vannier testified that in addition to what is noted above, he contacted Mr. Dewey, who was Laurel's employer prior to the accident.
- [20] Additionally, Vannier had a number of conversations, communications and meetings with Roxanne O'Connor, who was an I.C.B.C. rehabilitation representative, Dave Webster, an adjuster with the head office claims branch of I.C.B.C., Dr. Miller, a neuropsychologist who was treating Laurel at the time, and the various lawyers with I.C.B.C. who were handling the file.

[21] Vannier concluded that during the time he had conduct of the file he was never of the view that the trial could be lost. He was satisfied with the evidence that the liability issue or the contributory negligence defence of I.C.B.C. would not be successful. He also indicated that though no conversations had taken place with I.C.B.C. at the early stage of his involvement about settlement, he did view the case as being a "million dollar case."

[22] On behalf of the client, various representatives of her second solicitor's office, the law firm of Horne Marr Zak, were called to testify. In addition, her father, Frank Veszely, testified. The evidence called on behalf of the client is critical of the actions undertaken by Vannier. These criticisms can be characterized as follows:

a) Larrie Riddell:

Vannier is criticised for turning over conduct of the liability question, or the investigation side, to Larrie Riddell. It is suggested that Vannier did very little to retain control of the liability side of the file. Larrie Riddell is criticised as being an investigator with limited experience, and limited reputation. Her reports are criticised for various inaccuracies and she is particularly criticised for her retaining of Mr. Le Comte and Pacific Rim Accident Reconstruction Ltd., and for the limitations in his work.

b) David Tweedy:

Vannier is criticised for not speaking to the witness, David Tweedy, right away. It is suggested that Vannier was retained early on, that liability was clearly at issue, and David Tweedy was the best, or only witness available. It is suggested that Vannier's delay in speaking to David Tweedy could have had serious potential negative ramifications for the case, and his discussions should not have been left so long that a Rule 28 application was necessitated.

c) Don Le Comte's Investigation:

Vannier is criticised for indirectly retaining Mr. Le Comte. Mr. Le Comte's report is criticised significantly for its failure to conduct the accident reconstruction with a vehicle similar to that driven by the person who struck Laurel. Vannier is criticised for not noting the errors in the accident reconstruction report of Mr. Le Comte, it being Frank Veszely who noticed the significant problems and pointed them out to Vannier, who then took action. Additionally, Vannier is criticised because I.C.B.C. had retained an engineer to conduct this work, rather than an accident investigator, Mr. Le Comte, who was a former R.C.M.P. officer.

d) Roxanne O'Connor:

Both parties spoke glowingly of the qualifications and competence of Roxanne O'Connor, who is an I.C.B.C. rehabilitation specialist. However, Vannier is criticised for turning over the rehabilitation aspect of the case to essentially a representative of the defendant. It is suggested that the issues of rehabilitation were crucial to a wage loss claim or a determination of non-pecuniary damages. As such, an independent rehabilitation specialist was called for.

In regards to these criticisms, Vannier commented in redirect that he had always found Roxanne O'Connor to be competent and even handed. His view of dealing with Roxanne O'Connor was that he needed to co-operate with her or else funding for rehabilitation could be cut off. Based on his past experience with her, that being that she was a "capable, trusted and fair" person, and though she was clearly a representative of the defendant, Vannier felt comfortable in dealing with her taking the lead rehabilitation aspect of the file. Vannier further testified that he had numerous conversations with Roxanne O'Connor, and that virtually every time she was in Kamloops he would meet with her to discuss issues concerning Laurel's rehabilitation and plans for it.

e) Wage Loss Benefits:

Vannier is criticised for not attending to having these instituted immediately. Vannier testified in cross-examination that he was having difficulty getting the necessary documentation in place to apply for wage loss benefits, though he was close to having the materials together by the time the file was transferred. The evidence of the clients suggests that upon transfer of the file these wage loss benefits were almost immediately instituted, including retroactive benefits.

- [23] In regards to Vannier's evidence, I accept his testimony. Vannier impressed me as a credible witness, whose evidence was believable. If he did not recall an aspect of a question he stated so. His evidence, as indicated, was believable and he was not seriously shaken on cross-examination.
- [24] That is not to say, however, that a number of the criticisms levelled against him do not have foundation. I think it is fair criticism that Vannier left much of the liability investigation in the hands of the investigator. There is no satisfactory explanation as to why Mr. Tweedy was not contacted earlier on, and there is no explanation provided for the difficulties which arose which required the Rule 28 application. Additionally, in my view, Vannier should have retained the accident reconstruction specialist directly, and should have been more attentive to the errors in his report.
- [25] When the file was transferred from MJB to Horne, Marr, Zak there was very little evidence by way of memos and/or other work product which were of assistance to the new counsel. Counsel for the client raises a significant point that there are numerous time entries indicating memos to file, or memos to para-legal, which appear to involve reviews of medical reports, rehabilitation reports and other work product in the file which were not forwarded when the file was transferred, or did not exist.
- [26] In regards to the transfer of the file, as noted, the file was transferred to the law firm of Horne Marr Zak, and specifically to lead counsel, David Marr. David Marr gave evidence at the hearing and indicated that his office practise is to divide the issues of quantum and liability between the various lawyers at his firm. In this case, he retained the responsibility for quantum in regards to Laurel, and Graeme Black of his firm, retained the responsibility for liability. With Vannier, there was no such division of labour.

- [27] David Marr testified that, in his view, there was virtually no value to the work undertaken by Vannier on behalf of Laurel. He is critical of Vannier and of Larrie Riddell. He is critical of him for, in his view, leaving the rehabilitation aspect of the file completely in the hands of I.C.B.C. and Roxanne O'Connor. He is critical that, in his view, the medical information obtained by Vannier had "nothing useful" in it.
- [28] Graeme Black also gave evidence on behalf of the client. Graeme Black was particularly critical of the work of Larrie Riddell and of Don Le Comte. Interestingly, however, Graeme Black admitted that in regards to Larrie Riddell, no further investigator was retained by him in regards to the work done by Larrie Riddell. He is critical that in regards to the Rule 28 examination of Mr. Tweedy no transcript was ordered, though he admitted in cross-examination that he did not order a transcript.
- [29] In regards to the Le Comte report, Graeme Black indicated that he retained the services of Baker Material Engineering, an individual by the name of Harvey West. He was critical of the Le Comte report. He admitted in cross-examination that Harvey West has been extensively criticised in a number of cases before the Supreme Court of British for the work that he has done.

ISSUES:

Is the legal fees agreement between Laurel Veszely and MJB dated August 11, 1997 enforceable?

- [30] Laurel Veszely was seriously injured in a motor vehicle accident on June 30, 1997. She was in a coma for a significant period of time. She suffered a severe, traumatic brain injury. After her coma, she remained hospitalized for a long period of time and remained agitated, confused and unable to retain new information. A committee eventually had to be appointed to allow Laurel's claim to be settled.
- [31] On a date shortly after the accident that Laurel was out of the hospital temporarily on a day pass, while confined to a wheelchair, she signed the contingency fee agreement with MJB. She was suffering then, as she is suffering today, the affects of a traumatic brain injury. She clearly did not have the capacity to enter into a settlement of her I.C.B.C. claim, close to four years after she entered into the contingency fee agreement on August 11, 1997.
- [32] The evidence before me strongly suggests, and I have no difficulty in concluding, that Laurel did not have the capacity to enter into any fee agreement or any contract for that matter, when she purportedly entered into a fee agreement on the 11th August, 1997.
- [33] As a result, the legal fees agreement between Laurel Veszely and MJB is not enforceable.

Are the disbursements incurred on behalf of Ms. Veszely by the law firm, MJB, recoverable by MJB?

- [34] It was conceded by both parties that the maximum settlement available to Laurel, considering insurance limits, would be \$1,000,000.00, plus costs which included disbursements. Laurel Veszely's claim was settled at mediation for \$970,000.00, plus costs and disbursements. All the disbursements incurred by MJB were accepted at face value, and for the amount claimed, by I.C.B.C. at mediation. Laurel was paid for the entire costs of these disbursements.
- [35] Counsel for Laurel now argues that the disbursements were not reasonably incurred, and that Laurel should be credited for them, and the solicitor is only entitled to some reduced amount of disbursements, to reflect the allegation that they were not reasonably incurred.
- [36] In my view, this argument holds no weight. The client, Laurel, has been totally reimbursed by the defendant for the disbursement costs. To accede to the argument would be to effectively award the client double recovery. She has been paid by I.C.B.C. for her costs of these disbursements and she would not be obliged to reimburse MJB for the disbursements. No legal authority was provided for this by the solicitor for the client, and I see no legal basis for such an argument.
- [37] There is an argument that the initial report Mr. Le Comte was faulty in that he did not complete the initial accident reconstruction with a vehicle similar to the vehicle involved in the accident with Laurel. There is justifiable criticism that Larrie Riddell, upon Vannier's instructions, retained Le Comte on her own with little, if any, input from Vannier. However, I am not satisfied that these reports were in and of themselves of no value to the client. I note specifically that Mr. Black indicated in cross-examination that he did not feel it necessary to retain additional investigators.

What is the appropriate remuneration for the legal services rendered by MJB?

- [38] Any review in this area starts with a consideration of s.71 of the Legal Professions Act. S.71(4) & (5) read as follows:
- (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
- (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and

- (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.
- [39] The total fees charged by MJB to Laurel were \$18,514.00. The lawyer and articling student time was \$11,967.50 representing 67.7 hours of lawyer time, and 1.6 hours of articling student time.
- [40] The legal assistant and word processing time totals \$6,546.50.
- [41] In the absence of a contingency fee agreement confirming an agreement to bill secretarial and legal assistant time, lawyers are not entitled to bill such time. I have found here that there is no agreement. Additionally, no evidence was called by any party as to what role the para-legals at MJB played in the conduct of this file. Vannier testified that he would turn over medical information, clinical notes and the like, which he did request, to the para-legals who would vet them and organize them. There does not appear to be much value in this service to the client. The main criticism of David Marr of the work of Vannier was that when the file was turned over to David Marr, approximately one year after the accident, there was little work done on the quantum side of the case. No memos, summaries, or other follow-up on medical reports was present.
- [42] As indicated, David Marr testified there was virtually no value to the work undertaken by Vannier on behalf of the client, Laurel, on the quantum side of her claim. In my view, this comment ignores two significant facts. The first fact is that the work-up of this case, for lack of a better term, was very much at its early stage. It is not disputed that Vannier obtained a number of doctor's clinical notes and a number of hospital reports. Additionally, Vannier had organized a rehabilitation specialist for Laurel. He obtained records and reports from the rehabilitation therapist, as well as occupational therapist. The evidence before me suggests that all these records were turned over in an organized fashion to the law firm of Horne, Marr, Zak. That aspect of Vannier's testimony was not disputed.
- [43] Secondly, in a significant personal injury case such as this, it is clearly the liability side of the case that would occupy the lawyer's primary work time in the first year, more so than the quantum side of the case. Clearly, the extent of the quantum would depend on the extent of Laurel's recovery, if any, and was clearly something that would develop over time. It is noted that after the file was turned over to Horne, Marr, Zak, the case did not resolve itself until approximately four years later.
- [44] Graeme Black is critical of Vannier on the liability side. Some of those criticisms are justified and some are not. I cannot accept the criticism of Larrie Riddell, as suggested by Black, because Black did not, when he took over the liability aspect of Laurel's case, retain another accident investigator and clearly intended to rely on Larrie Riddell's work product. Graeme Black clearly does not appreciate the work of Mr. Le Comte, but it is equally clear that Vannier and his counsel do not appreciate or respect generally the quality of work which the

accident investigator of choice of Mr. Black, Harvey West, would have provided.

- [45] There was no evidence called by anyone with expertise to criticize either the work of Larrie Riddell or Don Le Comte, or for that matter, Harvey West. Clearly the lawyers who handled Laurel's case at various times had their preferred experts and were critical of the experts of the other, but no evidence was called before me on which I could base an independent assessment of who was the better expert.
- [46] I am left to conclude that the law firm of Horne, Marr, Zak and the law firm of MJB, specifically Vannier, handle the conduct of a personal injury case in a very different way. Again, I cannot conclude on the evidence before me that one law firm's way of doing it is superior to that of the other. Vannier's handling of the file was that Vannier was the one and only lawyer having conduct of the file. He was the one reviewing the clinical notes as they came in, and was directing support staff to assist him in file organization and management. At Horne, Marr, Zak things are done very differently.
- [47] Clearly, Frank Veszely, Laurel's father, felt that he was not getting as detailed or thorough service from Vannier as he had expected. He testified that he felt Vannier should have been putting more effort into the file. He was not satisfied with the work effort which he believed Vannier to be providing him, and he moved Laurel's file, as is a client's right. I do accept the criticisms that Frank Veszely makes of Vannier. Vannier should have been more attentive to the report of Don Le Comte when it came in. It should not have been left to Frank Veszely to find errors in that report, and insist on those errors being remedied.
- [48] Additionally, Vannier should have acted much more promptly in dealing with Laurel's claim for Part VII benefits for loss of wages, a problem that was remedied immediately upon the file being transferred with no financial loss to Laurel.
- [49] As noted earlier, and as noted by Frank Veszely in his testimony, no explanation is provided for the immediate lack of contact with David Tweedy.
- [50] In general, the work provided by Vannier assisted Laurel in establishing initial accident investigation information, and providing at least the initial basis for an argument against contributory negligence or reduced liability by the defendant. On the quantum side, Vannier obtained initial medical information which was subsequently used in the ultimate settlement of Laurel's case. However, there is really no explanation for the extent of the legal assistants' and secretarial time in this case. No significant evidence was provided as to what role they played in the conduct of the file, and there is little evidence that any of their work was ultimately of any value to the client. In my view, the work undertaken by MJB and Vannier, on behalf of Laurel, could easily be accomplished with 50 hours of lawyer's time. I accept that Vannier's hourly rate of \$175.00 per hour was reasonable in the circumstances.
- [51] I will approve fees for MJB in the amount of \$8,750.00, plus G.S.T. of \$612.50 and P.S.T. of \$612.50, for a total of \$9,975.00 in legal fees and taxes.

- [52] The disbursements are approved as claimed and I believe the evidence suggests that they have already been paid.
- [53] There has been a substantial reduction in this account, and as a result, the client is entitled to their costs. This matter occupied one full day and two half days of hearing. I would fix costs for the hearing at \$1,200.00 (inclusive of fees and disbursements), which should be deducted from the account of MJB.
- [54] Counsel can get back to me about the form of certificate if one is required.
- "Master J.R. Groves"

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