IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Green v. John M. Richter Law Corporation,* 2018 BCSC 1840

Date: 20181016
Docket: S183600
Registry: Vancouver

Between:

Christopher Green

Plaintiff

And

John M. Richter Law Corporation, doing business as Richter Trial Lawyers, Taylor & Blair and Roger Dawson

Defendants

On appeal from: A decision of a Master of the Supreme Court of British Columbia, dated August 28, 2018 (*Green v. John M. Richter Law Corp. & Others*, 2018 BCSC 1449, Vancouver Docket No. S183600)

Before: The Honourable Madam Justice Marzari

Oral Reasons for Judgment

The Plaintiff appearing on his own behalf:	C. Green
Counsel for the Defendants:	A. James
Place and Date of Trial/Hearing:	Vancouver, B.C. October 9, 2018
Place and Date of Judgment:	Vancouver, B.C. October 16, 2018

Introduction

[1] This is an appeal by the plaintiff, Mr. Green, from a decision of Master Vos sitting as Registrar with respect to a review of the legal fees of Mr. Green's various legal counsel. Specifically, Mr. Green challenges the Master's determination that Ms. James, on behalf of John M. Richter Law Corporation, doing business as Richter Trial Lawyers, is entitled to recover legal fees in the amount of $39,439.23. He does not challenge any of the other orders of Master Vos, including the award of disbursements to Richter Trial Lawyers, or the orders with respect to fees and disbursements to the law firm of Taylor & Blair.

[2] Mr. Green's primary basis for appeal is that the Master erred in law with respect to Richter Trial Lawyers entitlement to recover legal fees upon their withdrawal as counsel in the context of a contingency fee retainer. He also argues that the Master erred in fact and law in finding that the fee amount awarded was fair and reasonable.

Background and Factual Findings

[3] The background to this case is set out clearly in the decision of Master Vos at paras. 2-13. I will summarize these facts briefly:

[4] Mr. Green was involved in a motor vehicle accident in July 2010.

[5] Mr. Green first retained the law firm of Taylor & Blair in September 2010 with respect to recovery of damages as a result of that accident, and entered into a contingency fee agreement with that firm. That solicitor-client relationship ended in May 2014 when Mr. Green filed a notice of intention to act in person.

[6] Mr. Green then retained Dawson and Associates later in May 2014, who also conducted the case pursuant to a contingency fee agreement. Mr. Green's solicitor-client relationship with Dawson and Associates ended in February 2017 when Mr. Green filed a notice of intention to act in person.

[7] Mr. Green then retained Richter Trial Lawyers in June 2017. They entered into a contingency fee agreement whereby Mr. Green agreed to pay one-third of the total settlement or judgment obtained in the case, and disbursements. Amanda James had day-to-day conduct of the file for Richter Trial Lawyers.

[8] Mr. Green's solicitor-client relationship with Richter Trial Lawyers ended in November 2018, when Ms. James sent a notice of intention to withdraw pursuant to *Supreme Court Civil Rules*, Rule 22 – 6 (4). Mr. Green did not file an objection to that notice. Ms. James ceased to be the lawyer acting for Mr. Green on November 21, 2017.

[9] In or about January 2018, Mr. Green settled his claim directly with the representative of the defendant, ICBC, for $132,050 plus his party/party costs and disbursements of the action. In February 2018, Mr. Green further settled costs and disbursements with ICBC for $34,851, inclusive of taxes.

[10] All three law firms rendered final bills for fees, taxes and disbursements on a *quantum meruit* basis. Taylor & Blair's original bill totalled $23,037.79. Dawson and Associates original bill totalled $69,790.87. Richter Trial Lawyer's original bill totalled $60,505.04.

[11] Prior to the taxation before Master Vos, Mr. Green reached an agreement with Mr. Dawson, who has since retired, for payment of his disbursements only.

[12] The two remaining law firms conceded that their claim should be limited to sharing the fee that would be payable under the contingency fee agreement Mr. Green entered into with Richter Trial Lawyers (i.e. no more than one-third of the $132,050 settlement). That amount is less than the amounts they originally claimed when combined. Furthermore, the law firms agreed amongst themselves as to the division of fees with Mr. Dawson receiving no fees, Richter Trial Lawyers receiving 80% of the contingency fee, and the remaining 20% going to Taylor & Blair. All three firms claimed their disbursements of just over $27,000 in total.

[13] At the hearing before Master Vos, Mr. Green argued that the two law firms still seeking to recover fees should not recover any fees from him on the basis that they had terminated their legal relationship with him improperly and so were not entitled to recover fees pursuant to their contingency fee agreements with him. He generally acknowledged his liability for disbursements with the exception of a cancellation fee paid by Richter Trial Lawyers that was ultimately not allowed by Master Vos.

[14] Master Vos conducted a hearing lasting two days, in which he received affidavits and oral evidence, and heard cross-examination of witnesses.

[15] With respect to the termination of Mr. Green's solicitor-client relationship with Taylor & Blair, after reviewing all of the evidence, Master Vos found that it was Mr. Green that terminated that relationship (see paras. 21-22). With respect to the fees sought by Taylor & Blair, Master Vos found as follows:

> [26] The $10,000 fee claimed by Mr. Jacobson on behalf of Taylor & Blair is a fair fee based on his skill level, the services the firm provided to Mr. Green, and the time the firm would have spent on the case. The fee therefore is within the terms of clause 5 of the contingency fee agreement between Mr. Green and Taylor & Blair.

[16] These findings and the consequent requirement to pay Taylor & Blair's fees plus taxes and disbursements are not challenged by Mr. Green on this appeal.

[17] The contentious issue is the termination of the solicitor-client relationship between Richter Trial Lawyers and Mr. Green. In this regard, Mr. Vos made the following significant findings with respect to the breakdown of that relationship:

> [32] It is clear that the solicitor-client relationship between Mr. Green and Ms. James broke down during the course of their dealings. The emails in evidence show that Mr. Green was seriously questioning the propriety of Ms. James' conduct of the case. They had a confrontational meeting on October 26, 2017. Ms. James' affidavit made July 13, 2018 attaches notes she recorded after that meeting. The notes say "…Chris became combative with me through the entire 1 hour meeting"…"Chris accused me of not doing my 'fiduciary duty' and not 'honouring our agreement' and 'not being willing to help him'…" The notes indicate that Mr. Green continued to argue with Ms. James about a transportation cost claim he wanted to advance, despite

> Ms. James having sent legal research on the topic and further explaining the issue. Ms. James recorded the following in the notes:
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> > At one point in the meeting Chris began to raise his voice at me when I was disagreeing with him. I had to tell him to not raise his voice at me. I became upset and found it difficult to maintain my composure when he became upset and argumentative. After the meeting, I was very concerned about my ability to continue working with him. I was very shaken.
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> [33] There are other indications of a breakdown in the solicitor-client relationship. Ms. James sent an email to Mr. Green dated November 6, 2017 indicating that she needed to meet with him to discuss the case. In an argumentative and rather confrontational responding email Mr. Green sent on November 8, 2017, he advised Ms. James "…Whatever it is you are currently wanting to speak to me about, I want to have it communicated in writing..." [Underlining as in the original]. This was a sure sign that the solicitor client relationship had broken down. Mr. Green then refused to attend at his appointment with Dr. Axler, an expert evaluation Ms. James arranged in order to develop the claim.
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> [34] During the hearing, Mr. Green tried to characterize his questioning of Ms. James' conduct of the case, his confrontational emails, and his demand that matters to be discussed be communicated by email as disputes that could be expected between a lawyer and a client. They most certainly were not. They clearly went to the core of the solicitor-client relationship.
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> [Emphasis in original.]

[18] Ultimately, upon consideration of all the evidence before him, Master Vos found that Ms. James' decision to terminate the firm's solicitor-client relationship with Mr. Green was necessary and justified. Specifically, he found as follows:

> [35] A functioning solicitor-client relationship is a cornerstone of our legal system. For a solicitor-client relationship to be productive, it is crucial that the client should be confident that the lawyer is conducting the case in the best interests of the client. In practical terms, lawyers need to have a good working relationship with their clients in order to properly conduct the case. If the solicitor-client relationship breaks down, either party can and should bring the relationship to an end.
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> [36] The difficulties in the solicitor-client relationship between Ms. James and Mr. Green were as bad as, or worse than, those considered in *Bukova v. Gertsoyg & Company*, 2016 BCSC 2207. In that case, a lawyer was acting on a personal injury case pursuant to a contingency fee agreement. The court decided that the breakdown in the solicitor-client relationship justified the lawyer withdrawing his representation of the client. In the present case, Ms. James determined that the solicitor-client relationship between her and Mr. Green had broken down. She decided to terminate her professional relationship with Mr. Green. Her decision to end the solicitor-client relationship was justified.

> [Emphasis added.]

[19] Master Vos found that the settlement agreed to by Mr. Green less than two months after the termination of his relationship with Richter Trial Lawyers, was "very close to, if not essentially the same as" the offer that had previously been made to Richter Trial Lawyers at $131,200 plus outstanding special damages, assessable costs and disbursements.

[20] With respect to the amount of legal fees that Richter Trial Lawyers sought to recover, Master Vos found that a *quantum meruit* claim of $45,000 plus taxes and disbursements was fair on the evidence. His reasoning in this respect was as follows at paragraphs 37-38:

> [37] Although Ms. James acted on behalf of Mr. Green for only about five months, she obviously advanced the case. It is significant that during the time she handled the file an offer was presented on behalf of the defendants that was very close to the final settlement amount. In October 2017 the ICBC contacted Richter Trial Lawyers and offered to settle Mr. Green's case for $131,200 plus outstanding special damages plus assessable costs and disbursements. The settlement Mr. Green agreed to in January 2018 was $132,050 plus assessable costs and disbursements.
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> [38] The materials Ms. James has placed before the court include her account dated November 10, 2017, which sets out a detailed record of the time she worked on this file. She clearly dug in and worked diligently on a challenging file. Her time is well accounted for and was oriented to advancing the case. Her billing rate was $200 per hour. Some time is billed by John Richter, the senior lawyer at the firm. The total fees for the hours recorded would be $45,041.19. This is a fair fee based on the skill level and services Ms. James and her firm provided to Mr. Green.

[21] Although he found that a fee of $45,000 would have been fair, Master Vos agreed with counsel's concession that the total fees should not exceed the amounts that would have been payable pursuant to the contingency agreement, and that further the fees should not be stacked where more than one firm had acted for a client (See *Holness Law Group Professional Law Corporation v. Mann*, 2015 BCSC 2380). Ultimately, Master Vos found the division of the contingency fees as agreed upon between counsel to be fair and to reflect fair and reasonable value for the work provided:

> [51] The fee Mr. Jacobson is now claiming on behalf of Taylor & Blair is $8,803.40 (20% of $44,017). The fee Ms. James is now claiming on behalf of Richter Trial Lawyers is $35,213.60 (80% of $44,017). Both are appropriate fees for the legal services their firms provided to Mr. Green.

[22] It is only the $35,213.60 fee plus taxes ($39,439.23) owed to Richter Trial Lawyers that Mr. Green now appeals.

Issues

[23] On this appeal, Mr. Green argues two issues:

[24] First, he says that Master Vos erred in finding that Richter Trial Lawyers was entitled to recover any legal fees under their contingency fee retainer agreement, because it was Richter Trial Lawyers that terminated the solicitor-client relationship.

[25] Second, Mr. Green argues that Master Vos erred in fact and law by not properly considering or applying the requirement under the *Legal Profession Act*, S.B.C. 1998, c. 9, that the fees under a contingency fee agreement must be fair, necessary and reasonable. Mr. Green says that the efforts of Richter Trial Lawyers added only about 30% to the settlement offers that were already on the table when he retained them, and that they should therefore not be entitled to a contingency fee on the basis of the full settlement amount, and their fees should be substantially reduced, if awarded at all.

[26] While stating that he did not personally agree with the ruling of Master Vos that the termination of the solicitor-client relationship was justified in this case, Mr. Green stated that he accepted this determination for the purposes of his appeal.

[27] I will address the issue of the fairness of the fees in terms of the effort and work of counsel first, and then the more difficult issue of Richter Trial Lawyer's entitlement to terminate the retainer agreement in this case.

DISCUSSION

A. Were the legal fees awarded to Richter Trial Lawyers Fair?

[28] Mr. Green argues that Master Vos failed to consider s. 71 of the *Legal Profession Ac*t, and specifically the requirement that fees, charges and disbursements must be reasonably necessary and proper before they are allowed.

[29] I disagree. At paras. 37 to 38, Master Vos specifically considered the total fees charged by Richter Trial Lawyers, both in the context of the final settlement amount, and the experience and time dedicated to the file by the law firm. He found that the final settlement amount accepted by Mr. Green was very close to the settlement negotiated by Richter Trial Lawyers, there being a difference of less than $1,000. He also considered the detailed accounts provided by the law firm. Overall he found: "[t]he total fees for the hours recorded would be $45,041.19. This is a fair fee based on the skill level and services Ms. James and her firm provided to Mr. Green" (see para. 38). At para. 48 Master Vos found: "[b]oth Mr. Jacobson and Ms. James have satisfied the court that the fees they are seeking are properly claimed for such services."

[30] The assessment of legal fees is discretionary and fact-specific. Appeals from a Registrar's decision that involve an exercise of discretion should not be entertained unless the Registrar erred in principle or the decision was "clearly wrong": see *Mide Wilson v. Hungerford Tomyn Lawrenson and Nichols*, 2013 BCCA 559 at paras. 63 and 65; and *Wright v. Sun Life Assurance Company of Canada*, 2015 BCCA 312 at para. 10. Furthermore, in *Jiwan v. Davis & Company, A Partnership*, 2008 BCCA 494 at paras. 14–19 [*Jiwan*], the court held that the appellate principles from *Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*], apply to appeals from a Registrar. If the appeal involves findings of fact, the standard is palpable and overriding error, which is synonymous with the findings of fact being clearly wrong: see *M. Dhaliwal Holdings Inc. v. Pacific Blue Farms Ltd.*, 2014 BCSC 1482 at para. 26; and *Varty & Company v. Camp*, 2017 BCCA 369 at para. 14.

[31] Master Vos was sitting as a Registrar with respect to this taxation of fees, and the same principles that apply to deference to a Registrar must apply in this case.

[32] This aspect of the appeal essentially challenges Master Vos' finding of fact that the amounts charged in fees by Richter Trial Lawyers were fair and reasonable in all the circumstances. In my view, Master Vos was in the best position to make this determination having heard and considered both written and oral evidence and cross-examination. Furthermore, his determination is fully supported by the evidence.

[33] I would therefore uphold the decision of Master Vos on this ground of appeal.

B. Did the Master err in law in determining that Richter Trial Lawyers was entitled to recover fees where it unilaterally terminated the solicitor-client relationship?

[34] Mr. Green argues that in the context of his contingency fee retainer agreement with Richter Trial Lawyers, the law firm cannot recover on a *quantum meruit* or contingency fee basis where it unilaterally terminated the solicitor-client relationship.

[35] At common law, it is clear that legal counsel are entitled to recover their fees on a *quantum meruit* basis (or a contingency basis where that amount is less than what would be recovered on a *quantum meruit* basis) where the termination of the solicitor-client relationship was justified.

[36] In *Maillot v. Murray Lott Law Corp.*, 2002 BCSC 343, Madam Justice Boyd considered whether the established principle that a lawyer is entitled to recover fees for work done up to the time of termination where a retainer is terminated with cause, ought also to apply to the specific context of a contingency fee agreement. At para. 83 of that decision she determines that a lawyer in that circumstance is entitled to payment according to the termination clause in the agreement, or, where no such clause exists, on the basis of *quantum meruit*. This principle is now well established at common law: See e.g. *Klein Lyons v. Walia*, 2006 BCSC 396).

[37] Mr. Green argues, however, that Master Vos was wrong to rely on these decisions because they predate changes to the *Code of Professional Conduct for British Columbia* [the *Code*], and specifically the Commentary at para. 2 of Rule 3.6 – 2, which was introduced in 2013, and which limits the circumstances in which lawyers may terminate a contingency fee agreement as a matter of professional conduct to circumstances of obligatory withdrawal pursuant to Rule 3.7-7 unless the contingency fee agreement expressly states otherwise. The relevant provisions read as follows:

> **3.6-2** Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.
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> **Commentary**
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> **[2]** Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.
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> **3.7-7**A lawyer must withdraw if:
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> (a) discharged by a client;
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> (b) a client persists in instructing the lawyer to act contrary to professional ethics; or
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> (c) the lawyer is not competent to continue to handle a matter.

[38] Thus, the *Code* appears to provide a much higher threshold for withdrawal by counsel in a contingency based agreement than would otherwise by permitted. By reference only to Rule 3.7-7 it would appear to preclude termination pursuant to Rule 3.7-2, which provides for withdrawal **"**If there has been a serious loss of confidence between the lawyer and the client."

[39] Mr. Green says that even if the termination in this case was justified, as Master Vos found, Richter Trial Lawyers should not be entitled to recover any legal fees on the basis that they were in contravention of Rule 3.6-2 of the *Code*.

Specifically, he says that the contingency agreement he had with Richter Trial Lawyers did not state that the lawyer would have a right to termination or the circumstances under which that might occur.

[40] The contingency fee agreement Mr. Green entered into with Richter Trial Lawyers contained the following clause concerning termination of the solicitor-client relationship prior to resolution of the case:

> 5. Termination before Resolution.
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> If this agreement is terminated by the client or the Lawyer before this matter is resolved, the client agrees to pay the Lawyer's fees calculated as the greater of:
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> a. the applicable percentages of the sum of any offers plus advances made on behalf of the defendant(s), OR
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> b. a fair fee based on the services provided, time involved, nature of the claim, skill and experience of the Lawyer and probable actual value of the claim. The lawyers' current billing rates are $400 per hour for John Richter and $200 per hour for Amanda James, plus taxes and disbursements.

[41] Thus, the clause contemplates that the agreement could be terminated by the lawyer, but the contingency fee agreement does not otherwise specify the grounds for any such termination. Richter Trial Lawyers says that this is sufficient, and that termination for cause should be implied, while Mr. Green says this does not accord with the *Code*, and therefore the law firm should be disentitled to recover any legal fees.

[42] Unlike the first issue, this question raises a true issue of law. As a result, the standard of review is correctness: See *Jiwan* and *Housen.*

[43] In finding that Richter Trial Lawyers should be entitled to their fee in these circumstances, Master Vos stated as follows:

> [43] A lawyer cannot terminate a contingency fee agreement with his or her client without cause and a lawyer cannot recover a fee based on *quantum meruit* if the termination is without cause; *Maillot v. Murray Lott Law Corporation* (2002), 99 B.C.L.R. (3d) 170; *Klein Lyons v. Walia*, 2006 BCSC 396, at para. 35.

> [44] A breakdown in the solicitor-client relationship is cause to terminate a legal retainer, whether pursuant to a contingency fee agreement or another payment arrangement. To hold otherwise would not be in the interests of justice.
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> [45] Ms. James has satisfied the court that she ceased acting for Mr. Green because their solicitor-client relationship had broken down. The evidence does not support a finding that she ended the retainer for any improper reason.
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> [46] If the solicitor-client relationship under a contingency fee contract has broken down, the lawyer is permitted to withdraw as counsel for the client and is entitled to fees calculated on a *quantum meruit* basis; *Klein Lyons*, at paras. 42, 43 and 45.

[44] In doing so, Master Vos clearly relied upon well-established common law. He did not, however, expressly consider whether the introduction of the new *Code* provisions in 2013 had implications for that pre-existing common law.

[45] Master Vos and counsel also referenced *Bokova v. Gertsoyg & Company*, 2016 BCSC 2297, a case that was determined after the *Code* was introduced. In that case, the court decided that counsel was entitled to his fees after the breakdown in the solicitor-client relationship justified the lawyer withdrawing his representation of the client in the context of a contingency fee based retainer. That case, however, involved a contingency fee agreement that expressly stated the right of counsel to withdraw if the client refused to follow advice, and provided that the lawyer would be entitled to his fees on a *quantum meruit* basis or on a contingency fee based on the last offer obtained. The court found that the lawyer had complied with the *Code* in this respect.

[46] The parties were unable to direct me to any cases where the contingency agreement was less express in this regard. It does not appear that there are any previous decisions that indicate whether otherwise fair and reasonably incurred legal fees should be recoverable, or not recoverable, when a contingency fee based retainer is terminated unilaterally by counsel where this is not specifically provided for in the contingency agreement. In that respect, I understand that this is a case of first impression.

[47] I therefore must consider whether Richter Trial Lawyers should be entitled to recover any fees at all in these circumstances where the *Code* would appear to require more express terms in a contingency agreement before termination of the solicitor-client relationship by counsel.

[48] In my view, this is not the case to depart from the well-established common law regarding recovery of fees where the solicitor-client relationship is irreparably damaged and it is not in the interests of justice to require counsel to continue, notwithstanding the introduction of Rule 3.6-2 of the *Code*.

[49] It is important to note that the *Code* does not dictate whether a lawyer is entitled to recover reasonably incurred fees or not. While I recognize that the *Code* and the *Legal Profession Act* have some common goals, and that in some cases a breach of the *Code* might well disentitle a lawyer to fees otherwise reasonably incurred, I do not consider that to be the case here. In this regard, I consider each one of the following factors particularly significant:

a) On the evidence before Master Vos, there was a strong basis for termination of the solicitor-client relationship, to the extent that it would not have been in the interests of justice to require it to continue;

b) Mr. Green's final damages settlement was essentially the same as the settlement that was negotiated by Ms. James two months before. Mr. Green benefited directly from the work of counsel in this regard;

c) The fees charged and sought to be recovered were fair and reasonable in terms of the legal work provided to Mr. Green;

d) Counsel for the various law firms that represented Mr. Green throughout his claim settled between themselves the percentage each should be entitled to from the contingency fee. If Richter Trial Lawyers was disqualified from recovering any amount, it is not at all apparent that the other firms would have reduced their claims to the extent that they did. It would therefore be inequitable for Mr. Green to have the benefit of that

agreement between counsel, and to essentially only pay 20% of the contingency fee he agreed to with all three law firms who represented him;

e) It would be a significant windfall to Mr. Green to receive the full settlement that was negotiated over time by each of his successive counsel without also being responsible for the contingency fee payment he agreed to; and

f) The contingency fee agreement in this case does provide for payment of legal fees in the event that the relationship is terminated by counsel and how those fees would be calculated. It would have been much better had the agreement more fully set out the circumstances under which this might occur as indicated in the *Code*, but that is a matter more properly for the Law Society to consider. I find that for the purposes of fee recovery, Mr. Green was sufficiently forewarned of the possibility that counsel might terminate the agreement and that the fees should be recoverable pursuant to that agreement where the termination was with cause.

[50] Finally, I would also note that it would be problematic for our justice system if law firms insisted on continuing to represent clients where they had lost the confidence of their client, simply so that they might recover some amount of legal fees in the future. That did not occur in this case, and I find that counsel should be entitled to her fair and reasonable fees as found by Master Vos.

[51] For all of these reasons, I dismiss the appeal and uphold the determination of Master Vos, and direct that the payments for fees and disbursements, as awarded by Master Vos, be paid to the respective law firms from the funds currently held in trust for this purpose.

"Marzari J."