

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** Margaret Wells (Applicant) **AND** Stephen Benmor (Respondent)

**BEFORE:** Klowak J.

**COUNSEL:** *Miriam Vale Peters*, for the Applicant

*William Abbott*, Solicitor for the Respondent

**HEARD:** April 24, 2008

**ENDORSEMENT**

[1] The applicant says she did not know she could assess her solicitor's account until the Law Society of Upper Canada advised her accordingly about one week after the month for such assessment without leave had expired.

[2] She did not commence the application for leave until about three weeks later, after she received the solicitor's motion for a Charging Order against the Proceeds of Sale of her house as was provided for in the retainer.

[3] Of significance is that she did not complain of the services and the amounts charged for them when she met with the solicitor after receiving his account nor did she make any such complaint when she wrote the Law Society.

[4] Her issue was that if she did not get her full proceeds from sale of her home because of having to pay the solicitor's account from those proceeds, then she would be unable to close on the deal with respect to her new house in Barrie and would lose her O.D.S.P. payments.

[5] As observed by Conway J. who made the Charging Order, the solicitor should not have to bear the consequences of the client committing to a property which leaves nothing for payment of her legal accounts.

[6] I am mindful of the medical letter in the client's material indicating she has problems with anxiety, memory, and situations which she finds stressful, and may tend to not assert herself.

[7] Even so, that does not help her to escape payment of her legal bills as she had many months to consider and review her retainer and many months after she received the first account to take appropriate steps to deal with any dispute.

[8] The retainer itself was not argued before me.

[9] I am also mindful that the client is only out of time by about one month or so and I take the view that the longer the period the heavier the onus with regard to the nature of those special circumstances.

[10] Here, however, I see no special circumstances and the complaints I have been pointed to regarding the solicitor's accounts appear relatively minor. I stress the word relatively, since they must be taken in light of the whole account.

[11] That client feels some items and questions with respect to the accounts require further investigation and examination does not amount to special circumstances which would justify a Court in giving leave to assess the solicitor's account.

[12] In light of the absence of special circumstances, I find it matters little that the period of delay is relatively short.

[13] Further, counsel's accounts and the results achieved through his efforts appear to be overall appropriate.

[14] In all the circumstances, the Application for Leave to Assess the Solicitor's Accounts is dismissed.

[15] I have heard submissions with respect to costs and for reasons given orally in the courtroom have already endorsed that each side is to bear its own costs.

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Klowak J.

**DATE:** April 30, 2008