Cite as: Campbell Comeau Engineering Ltd. v. Alta Surety Company, 1996 NSSC 18

1991 **S.H. No. 78556**

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

CAMPBELL COMEAU ENGINEERING LTD.

- and -

ALTA SURETY COMPANY

D E C I S I O N

HEARD: at Halifax, Nova Scotia, before the Honourable Justice Walter R. E. Goodfellow September 16 - 19, 1996

DECISION: September 19, 1996 (Orally)

WRITTEN RELEASE OF ORAL: September 20, 1996

COUNSEL: Alan V. Parish and Robert S. Cowan
Counsel for the Plaintiff

Geoffrey A. Saunders
Counsel for the Defendant

GOODFELLOW, J.:

1. BACKGROUND

Campbell Comeau (Campbell Comeau Engineering Ltd.) is a Nova Scotia company which carries on a professional engineering practice specializing in structural design. In the course of its work Campbell Comeau provides design services, including the production of working drawings and field administrative services.

Alta is a federally incorporated bonding company established in 1985 which provides suretyship in return for a premium.

GEM is a general contractor which began providing construction services in Nova Scotia in the 1980's. GEM was an experienced contractor which had been involved in a number of large construction projects. It is now insolvent.

KMI is Keddy Motor Inns which owns and operates a number of hotels in the Maritime Provinces.

On October 5th, 1988, KMI entered into a forty-one year ground lease with Her Majesty the Queen as represented by the Minister of Transport for the right to construct, operate and maintain a hotel at the Halifax International Airport. Article 32 of this lease required KMI to obtain surety bonds guaranteeing the performance of the construction contract and prompt payment of subtrades.

KMI hired its architect Peter Cochrane before entering into the ground lease.

Several discussions took place between Donald Keddy, President of KMI, and Grant MacNutt, President of GEM Construction Ltd., which culminated in an oral contract by handshake whereby GEM would construct for KMI the airport hotel. The basis of the agreement between Keddy and GEM is contained in the budget forwarded by Mr. MacNutt to Mr. Keddy by letter dated November 14, 1989. The agreement between them was that if the construction of the hotel came in under budget ($11,977,000), the savings would be shared 70% to the owner KMI and 30% to the contractor GEM. Similarly, if the cost of construction exceeded the budget, the cost above budget would be shared on the same ratio.

In addition to hiring its own architect, KMI had utilized in the early stages some of its own construction equipment. Prior to the oral agreement for construction of the hotel, KMI had engaged the services of a structural engineer, George Bandys and Associates Limited, for the design work and after the entering of the oral agreement, KMI approached GEM for GEM to organize the design and structural engineering work in return for an administrative fee. GEM entered into a contract with Campbell Comeau for this purpose and Campbell Comeau proceeded to complete the structural steel and design work required.

GEM was invited by Keddy to a preliminary meeting at the airport March 2, 1990 and by this time, Mr. Neil Young, GEM's construction manager had been advised by Mr. MacNutt that they had the airport job. GEM attended this meeting to learn what was expected under the proposal that had been sent out by Transport Canada for development of the hotel and GEM were effectively the contract agents for KMI. GEM attended this

meeting mainly to determine what was required of GEM on behalf of Keddy and it was clear that there were various requirements before starting the construction of the hotel.

KMI had some difficulty obtaining the surety bonds and Donald Keddy approached Grant MacNutt, the President of GEM Construction for assistance. Mr. MacNutt inquired of his own insurance agent and received a recommendation to use V. J. Stanhope Insurance Ltd., an insurance broker who handled surety bonds. GEM secured the bonds and Mr. Young, its construction manager, forwarded them to Transport Canada by letter May 31, 1990. KMI was to reimburse GEM for the premium cost of the bond.

The ground lease between Transport and KMI required a Labour and Materials Bond and a Performance Bond.

Campbell Comeau entered a separate contract with GEM to do shop drawings on behalf of the metal fabricator Harris Rebar Ltd.

Financing assistance for the project from ACOA, a federal agency, was not forthcoming and KMI placed its reliance upon the immigration investors program. The overall projection for the cost of the project including everything ie. furniture, etc. was estimated at $20 million. KMI sought an extension of time for the immigration funding and when this was not forthcoming, the project was at an end. Work ceased December 22, 1989.

A number of lawsuits have taken place with respect to the performance/labour materials bonds provided by Alta. The result of those decisions narrows the issues to be addressed in this trial.

2. ISSUES

Issue No. 1 - Is Campbell Comeau's failure to provide its Notice of Claim within the time limits and in the form prescribed by the Labour and Materials Bond fatal to its action?

Issue No. 2 - Were the engineering and design services provided by Campbell Comeau in the amount of $94,000 and the second contract for shop drawings and specifications provided to the subcontractor steel fabricator Harris Rebar Ltd. in the amount of $16,012 part of the contract which was bonded by Alta?

3. STATUTORY AND OTHER PROVISIONS

Insurance Act, R..S., c.231

> 3 (k) "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing or value upon the happening of a certain event and includes life insurance.

Court may relieve against forfeiture

> 33 Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court considers it inequitable that the insurance should be forfeited

or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

Head Lease

32. Surety Bond

Upon execution of this Lease, the Lessee shall furnish to the Lessor, and without expense to the Lessor, a Surety Bond issued by a Surety Company satisfactory to and approved by the Lessor in a sum not less than fifty percent (50%) of the total price or cost of the contract or contracts for the construction of the said hotel, guaranteeing the faithful performance of the said construction contract(s) including corrections after final payment and also guaranteeing the prompt payment of all persons supplying labour, materials, provisions, provender, supplied and equipment used directly or indirectly in the execution of the work provided for in the said construction contract(s) and protecting the Lessor from any liability, losses or damages arising therefrom. Such Bond shall name the Lessor and the Lessee as obligees and shall be delivered to the lessor prior to commencement of the construction work. The bond shall be in the form approved by the Canadian Construction Association.

4. ISSUE NO. 1

Issue No. 1 - Is Campbell Comeau's failure to provide its Notice of Claim within the time limits and in the form prescribed by the Labour and Materials Bond fatal to its action?

Campbell Comeau was unaware of the time limitation in the labour and material payment bond which required notice of a claim within 120 days after the date upon which the claimant did or perform the last of the work or labour... It is agreed that the work ceased December 22, 1989 and Notice of Claim was given by Campbell Comeau on April 15, 1996 to GEM. Notice of Claim to the Minister of Transport and Alta was sent by

registered mail on June 3, 1991, 163 days after the work order ceasing construction had been issued.

There is no need for me to recite all the evidence that I have reviewed very carefully. I have gone through the same exercise as I went through in **Smith v. Clayton et al.** (1994), 133 N.S.R. (2d) 157. The facts in this situation fall within the determination of Roscoe, J.A. in **Sherubine Metal Works Ltd. v. Nova Scotia (Attorney General)** (1995), 137 N.S.R. (2d) 197 where the Court of Appeal confirmed the trial justice's finding that on the history on of the dealings between the parties, the lack of evidence of prejudice occasioned by delay warranted confirming the striking of the limitation defence under the *Limitations of Action Act* R.S.N.S. 1989, c.258 s. 3(2).

There is no evidence of prejudice to Alta and the limitations defence is struck. Had I not struck the limitations defence based upon s. 2 of the *Limitations Act*, I would have adopted the Supreme Court of Canada position in **Citadel General Assurance Co. v. Johns-Manville Canada Inc. et al.** (1983), 147 D.L.R. (3d) 593 (S.C.C.)

Johns-Manville, a contractor, provided materials for a project for which there was a labour and materials payment bond.

The notice provision required written notice by registered mail within a stated time period. Written notice by registered mail was given within the 120 day period to the Surety

Company. However, the owner was only given notice by ordinary mail and the principal received no written notice but was kept informed and in the view of the trial judge, suffered no prejudice.

In dismissing the appeal, McIntyre, J. said at page 601:

> ... the basis of the surety's liability must, of course, be found in the bond into which it has entered, but in the case of the compensated surety it cannot be every variation in the guaranteed contract, however minor, or every failure of a claimant to meet the conditions imposed by the bond, however trivial, which will enable the surety to escape liability. Where, as here, the object of the notice provisions in the bond has been fully achieved within the time-limits imposed and where there has been no prejudice whatever to the appellant, the whole purpose for the obtaining of the bond would be defeated if the appellant were to be discharged. The failures complained of in this case in no way affect the relationship between the parties and in no way change the true basis of the bond contract. The appellant is simply faced with the duty of carrying out the bargain it made. I would not give effect to this ground of appeal.

Additionally, Campbell Comeau would have been entitled to relief under the *Insurance Act.*

In **Elance Steel Fabricating Co. v. Falk Brothers Industries Limited** (1989), 35 C.L.R. 225 (S.C.C.) the issue of whether the *Insurance Act* permits the court to grant relief from forfeiture where the claimant failed to give notice of its claim to the insurer within the time prescribed by a labour and material payment bond was dealt with by the Supreme Court of Canada in its consideration of a section in the Saskatchewan *Insurance Act* identical to s.33 of the Nova Scotia *Insurance Act*. **Elance Steel** claimed against a bond issued by Canadian

Surety for supply of metal to Falk. Elance failed to give notice of its claim within the 120 day period in the bond and gave notice 28 days after the limited time period. McLaughlin, J. concluded page 233-234:

> In summary, I conclude that s. 109 of *The Saskatchewan Insurance Act* is not confined to statutory conditions and that failure to provide notice of claim in a timely fashion is imperfect compliance under s. 109. It follows that the Court has the power to grant relief under s. 109.

This decision of the Supreme Court of Canada in **Elance Steel Fabricating co. v. Falk Brothers Industries Limited** (1989), 35 C.L.R. 225 and the decision of the British Columbia Court of Appeal in 312630 **British Columbia Limited v. Alta Surety Co.** (1995), 23 C.L.R. (2d) 273 both support the position that imperfect compliance with the notice provisions contained in a Labour and Materials Bond is a defect curable by the provisions of the *Insurance Act* relating to relief from forfeiture.

Issue No. 1 is answered in the negative.

5. ISSUE NO. 2

Issue No. 2 - Were the engineering and design services provided by Campbell Comeau in the amount of $94,000 and the second contract for shop drawings and specifications provided to the subcontractor steel fabricator Harris in the amount of $16,012 part of the contract which was bonded by Alta?

I want first to address the question of whether or not Campbell Comeau is a "Claimant" under the terms of the Labour and Materials Bond.

The portion of the Labour and Materials Bond relevant to this issue is contained in condition 1 of the Bond:

> 1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal [GEM] for labour, material, or both, used or reasonably required for use in the performance of the Contract ...

Condition 1 provides the standard definition of a Claimant. Condition 2 of the Labour and Materials Bond essentially makes the Obligee [KMI] a Trustee for a Claimant and give the Claimant, although not itself a party to the Labour and Materials Bond, the right to sue under the Bond for payment of monies owing to it by the Principal [GEM] in accordance with the Claimant's contract with the Principal.

In this case the Obligee/Trustee is KMI while the Surety is Alta. GEM, as the general contractor is the Principal.

There are three criteria contained in the definition of Claimant which a company seeking to recover under the terms of the Labour and Materials Bond must meet. The potential Claimant must establish that:

(a) it has a direct contract with the Principal;

(b) for labour or material or both;

(c) which is used or reasonably required for use in the performance of the contract between the Principal and the Obligee.

Each of these elements will be dealt with in turn.

(a) it has a direct contract with the Principal;

Campbell Comeau had two contracts with GEM relating to the hotel project. One contract was for structural engineering services while the other was for the preparation of reinforcing steel placement drawings and bar lists to be installed by Harris Rebar Ltd.

Campbell Comeau had a direct contract with GEM for the provision of engineering services. This contract was partly in writing and partly oral. The agreement between Campbell Comeau and GEM for engineering services was concluded in early 1990 when Campbell Comeau was retained by GEM to replace the structural engineer who had been working on the project. Pursuant to this agreement Campbell Comeau was to provide GEM with the necessary structural engineering work for a fee. The nature of the work performed by Campbell Comeau included the preparation of structural designs and specifications for the hotel project and also included attendance at the site of construction to review the construction program. Campbell Comeau issued invoices to GEM for this work. The total value of the work performed under this contract was $94,000.

The second contract between Campbell Comeau and GEM was for the preparation of reinforcing steel placement drawings and bar lists. This contract was an oral agreement for which Campbell Comeau issued invoices which were accepted by GEM in the total amount of $16,012.

All of the work performed by Campbell Comeau was performed pursuant to direct contract with GEM. Campbell Comeau did not enter into a contract with any other party working on the project, or with KMI.

(b) for labour or material or both;

The general theory of mechanics' liens is that materials provided and labour expended in the construction add value. Although this is not a lien action, the services performed by Campbell Comeau were utilized in the construction of the hotel and added value. Physical deployment of labour and materials was driven by the services provided by Campbell Comeau and they became an integral part of the labour.

The late O'Hearn, J.C.C. in **Jenkins v. Wilin Construction Limited** (1977), 25 N.S.R. (2d) 19 was called upon to interpret the Mechanics' Lien Act. The Act dealt with the performance of work or service upon on or *in respect of* and related to construction, erecting and improving, etc. etc. etc. O'Hearn, J.C.C. held the Act was broad enough in its terminology and purpose to encompass the engineering services which included the preparations of plans and drawings. This was so even though the project did not proceed to construction.

Scott and Reynolds on Surety Bonds at S. 2.2(c) *the Surety Obligation at Common Law*:

(b) Bond Interpretation

> Where a surety bond is conditioned upon the performance of a specific agreement referred to on the face of the bond (or incorporated by reference into the bond, as will ordinarily be the case with a performance bond), such instrument becomes a part of the bond and the two must be read together and construed as a whole: see *British American Oil Co. v. Ferguson*, 1 W.W.R. (N.S.) 103 at 110, [1951] 2 D.L.R. 37 (Alta C.A.); *Re Bodner Road Construction Ltd.* (1963), 5 C.B.R. (N.S.) 293 (Man. Q.B.); *Niagara & Ontario Construction Co. v. Wyse* (1913), 24 O.W.R. 302, 4 O.W.N. 875, 10 D.L.R. 116 at 118 (Ont. S.C.); and *Employers Liability Assurance Corp. v. R.*, [1969] 2 Ex. C.R. 246 at 255.
>
> Generally, the words in a surety bond must be given their ordinary meaning. For example, if a bond contains a clear exclusion, the bond will not answer for the excluded work even if it is added to the underlying agreement by way of the usual change order mechanism: see *Thomas Fuller Construction Co.* (1958) v. *Chateau Insurance Co.* (1988), 34 C.L.R. 275 (Ont. H.C.), affirmed (July 5, 1991), Doc. No. CA 611/88 (Ont. C.A.).

The dissent in the Court of Appeal in **Fuller** above would have interpreted the excluded work as being descriptive extending the bond to all the work performed under the contract.

The term "labour" is not defined in the Labour and Materials Bond, however "labour", as it is used in the Bond, is broad enough to encompass the types of services which were provided by Campbell Comeau for the construction of the Airport Hotel.

Various provisions of the bond use the terms "work" and "labour" interchangeably. For example, condition 2 of the Labour and Materials Bond refers to the last day on which the Claimant's work or labour was done. Condition 3(a)(2) makes a similar reference to

work and labour. Use of "work" and "labour" interchangeably indicates that "labour" should be read in its broadest sense. Therefore, "labour" as used in the Labour and Materials Bond encompasses the services provided by Campbell Comeau in the development of the Airport Hotel.

(c) **which is used or reasonably required for use in the performance of the contract between the Principal and the Obligee.**

The services provided by Campbell Comeau were an integral part of the construction of the Airport Hotel. As I have already stated, physical deployment of labour and materials was driven by the services provided integrating Campbell Comeau's services well within this requirement.

The conclusion I come to is that Campbell Comeau meets the requirements of a "Claimant" under the terms of the Labour and Materials Bond.

The next question to address is whether or not there existed only one contract or a series of contracts. Campbell Comeau takes the position that it's two contract were in effect part and parcel of the contract for the hotel development and Alta takes the position that only the oral contract between GEM and KMI as evidenced by the budget specifics totalling $11,977,00 constitute the bonded contract with all other contracts being outside and uncovered by the surety bond. From the evidence I makes the following findings of fact:

1. GEM and KMI entered an oral agreement evidenced by Mr. MacNutt's letter of November 14, 1989 where the hard-cost construction costs detailed in the budget totalled $11,977,000. The contract allowed for the building to be under construction as the design and engineering stage is in progress which is what the parties called "a fast track". The contract subject the sharing of savings below budget 70% to the owner and 30% to the contractor and likewise a sharing on the same basis on any cost overrun.

2. KMI hired its architect, Peter D. Cochrane, before entering into the initial ground lease with the Department of Transport.

3. Prior to the oral agreement referred to in #1 for the hard-cost construction of the hotel, KMI had engaged the services of structural engineers, George Bandys and Associates Ltd.

4. GEM with the concurrence of KMI terminated the services of George Bandys and Associates Ltd.

5. GEM contracted directly with Campbell Comeau to replace George Bandys and Associates Ltd. This contract and the subsequent contract whereby Campbell Comeau did shop drawings and some supervision on site were both entered into by Campbell Comeau with GEM and not with KMI.

6. GEM distinguished the type of work by accounts: 1320 was reserved for the hard-costs of the hotel construction; 1324 was essentially for the design; and 1325 for relocating services. When the November 14, 1989 contract letter was sent by Mr. MacNutt to KMI, it was anticipated at that time that the architectural and structurally engineering work would be organized by KMI. I am aware that the first progress billing for account #1324 contained such items as signage and the bonding cost of these accounts were put in #1324 as a matter of convenience. Very clearly GEM intended to and did distinguish accounts by type of work.

7. The items contained in accounts #1324 and #1325 with the possible exception of Campbell Comeau's account for $16,012 covering the shop drawings and supervision for Harris Rebar Ltd. were not contained in account #1320.

8. The correspondence between GEM and KMI consistently segregated work into their respective accounts for example, on June 28, 1990 the general manager of GEM forwarded progress billing #1 to KMI for the "preliminary work to relocate services and roadways" and this was account #1325. A similar letter of the same date dealt with the design aspect, account #1324. GEM advanced its first progress billing on account #1320 by letter dated July 31, 1990 which commences "This month marked the start of construction on the hotel building proper."

9. There was one major departure from the consistent segregation of accounts. That arises in the work on hand reports dated June 30, 1990, September 21, 1990, and December 31, 1990. These are related to GEM report to KMI dated November 30, 1990 attaching progress billings for the above project for work completed up to November 30, 1990 all accounts #1320, #1324 and #1325 are lumped together as are the payments received for the first two progress billings which cover design work account #1324 and the relocation account #1325. When the first work on hand report was submitted June 30, 1990 to Alta, it would appear that GEM had arrived at the amount uncompleted on the $12 million contract by deducting therefrom accounts #1324 and #1325.

10. There are separate terms for each of the accounts. Payment of #1320 was subject to the 70-30 provision. Payment of #1324 was subject to a 10% administrative fee and #1325 was subject to a 15% administrative fee. While it is possible to have separate terms for portions of one contract, in this case I conclude that they are separate distinct terms of separate contracts.

11. Grant MacNutt, while describing in his evidence #1320, #1324, #1325 and the second contract between GEM and Campbell Comeau as entirely separate and distinct contracts not included in the hard-cost contract, nevertheless, stated on discovery that there was but one contract with various phases.

12. GEM wrote to KMI April 18, 1990, advising:

> ... The portion of work covered by the facilities alteration permits required to relocate the mechanical and electrical services, parking lot entrance changes and roadway realignment is not included in the construction budget and we will accumulate these costs separately for billing purposes as the work progresses.
>
> ... We will keep the design and consulting costs for this project in a separate account from the construction budget and will submit progress billings as required for reimbursement from your office.

13. GEM considered and KMI accepted the work required on the parking lot was outside the scope of work for the hotel and GEM by letter June 6, 1990 inquired of KMI whether they should proceed with the relocation of services and the design work as a separate cost arrangement with an administrative fee and KMI decided to have this contract fulfilled by Dexter Construction.

6. CONCLUSION

I also take into account the evidence of Mr. Keddy, Mr. MacNutt, Mr. Campbell and Mr. Young and after careful consideration I conclude that there were in fact a number of contracts. I acknowledge Campbell Comeau's argument that segregating accounts was an accounting feature but in my view it was much more. There were clear, separate terms of the various contracts, most notably with respect to their separate contractual basis of remuneration. I find as a fact that there were several individual contracts relating to the airport hotel development.

interpretation limiting its choice of the job descriptions to the hard costs of construction only. If that had been the intent of Alta then very easily it could have been stated. I ask myself what did Alta bind itself to cover for which it was compensated by a premium? I think the only reasonable answer is the construction hotel development which is a broad descriptive term and giving the word "development" its plain, ordinary meaning extends beyond the hard construction costs only. Alta has no one to blame but itself for its choice of terminology and its failure to require any specifics by which it might otherwise have limited its broad development coverage.

7. RESULT

In the final result I find both of the contracts of Campbell Comeau to clearly come within the labour and material payment bond. Campbell Comeau shall recover its total claim in the amount of $110,012.

8. GENERAL

I have reviewed very carefully and fully the excellent written briefs filed by counsel and I have considered all their various arguments in their lengthy and detailed oral summations. I found them extremely helpful in coming to grips with this matter. I do not propose reciting all the matters raised and considered. However, I will touch upon a few of them.

(a) *Credibility*

There are differences of recollection between Mr. Campbell and Mr. MacNutt on what may have been said by Mr. MacNutt in relation to the job being bonded. Mr. Campbell says he was told by Mr. MacNutt that it was a bonded job and that Campbell Comeau would be covered. Mr. MacNutt acknowledges he may have commented that it was a bonded job but he emphatically says Campbell Comeau was not covered and that he therefore did not and would not have said they were covered. A great deal of time has lapsed and all the witnesses understandably face the difficulty of trying of recall with any measure of certainty what was said and when. Both Mr. Campbell and Mr. MacNutt have a real interest in the outcome of this litigation and subconsciously this impacts on recollection. I conclude that they both genuinely believe their recollection is honest and accurate. In the final analysis, I need not make a specific finding on this aspect because there was no reliance by Campbell Comeau on such representations. Campbell Comeau never saw or knew the terms of the bond and had never in the past or in this case, entered its contract with any consideration to the existence of a bond.

Mr. MacNutt's capacity of recollection was further impacted by the serious health problems he experienced at particular times.

(b) *Contra Preferendum*

This principal has no application because I find the terminology used by Alta's agent to be clear and unambiguous.

(c) *Adverse Inferences*

Counsel for Campbell Comeau invite the court to draw adverse inferences from the failure of Alta to present Julie Bedard, a vice-president of Alta and the representative of Alta at the May meeting in Montreal when the bond was secured by Stanhope/GEM. I see no basis or need to draw any adverse inferences. The evidence is clear that Alta was represented by its agent Stanhope and that Stanhope chose and inserted the job description in the bond.

Alta was interested in the financial and professional standing of GEM and showed little if any interest in the possible specifics of the bond coverage. Alta was content with its agent's terminology and made little if any effort to secure a copy of an executed written contract (which did not exist despite reference to such in the bond), a copy of the budget for hard costs, etc. etc.. The obligation undertaken by Alta for premium compensation was clearly stated in plain language in its bond and Alta never qualified or limited it. Mr. LeBlanc called by Alta acknowledged what the bond says.

(d) **Wording In Bond**

Nothing turns on the difference in some of the wording between the Performance Bond and the Labour and Materials bond.

9. PRE-JUDGMENT INTEREST

Counsel now advise that they anticipate reaching an agreement on the rate of pre-judgment interest. They are unable to agree on the term for which pre-judgment interest should apply but having heard both counsel, I conclude that although some of the delay was clearly justified, there has been a measure of delay that has not been accounted for. Pre-judgment rate is normally at a higher rate than what a claimant is entitled under *The Interest on Judgments Act* and in the absence of a satisfactory reason for further delay, I limit pre-judgment interest to a term of four years. **Thomas-Canning v. Juteau** (1993), 122 N.S.R. (2d) 23.

10. COSTS

Counsel are agreed that costs to Campbell Comeau be taxed and allowed in accordance with Tariff "A" Scale 3 in the agreed amount of $7600. Campbell Comeau is entitled to its disbursements and counsel anticipate reaching agreement. Should they fail to reach an agreement, they have leave to make written representations and I will be pleased to tax the disbursements.

JUSTICE W.R.E. GOODFELLOW