Harris v. Quain & Quain: A Comment

The recent decision of the Quebec Court of Appeal in *Harris* v. *Quain & Quain*[1] seems to represent a serious incursion into what has commonly been referred to as "barrister immunity" and also seems to reflect a growing tendency on the part of the courts to hold lawyers to stricter account. As reported in *The Gazette* (Montreal),[2] the legal firm of Quain & Quain was found negligent for failing to "provide" and "present"[3] available medical evidence to the Superior Court which heard the original damage claim of their former client. The circumstances leading to that judgment are both interesting and ironic.

In December 1966, Lloyd Harris, a Vancouver resident, was seriously injured in an automobile accident while visiting Hull, Quebec. Among other things, the man suffered head injuries and a serious fracture of the left leg and hip. For more than six months he was immobilized in a plaster cast and totally incapacitated for about a year. Subsequently, a fifteen per cent permanent disability was diagnosed.

The Ottawa-Hull legal firm of Quain & Quain acted as attorneys of record in an action claiming damages for such injuries against Raymond Ladouceur and the heirs of Celina Stickler. Judgment was rendered in December 1968 by a Quebec Superior Court in Hull and damages against Ladouceur were assessed at just over $8,000 to cover various disbursements, total temporary incapacity (for six months), pain and suffering and loss of enjoyment of life.

Harris's attorneys had also claimed damages under other heads but at trial, the Honourable Mr François Chevalier found that no proper evidence had been adduced to support such claims. The decision of that Court was not appealed.

In 1969, however, Harris was sued by his former attorneys, Quain & Quain, for fees owing as a result of their professional services in the 1968 trial. It was with the plea to this action that Harris made his cross-demand, alleging that the Quain firm had failed to secure available evidence, thus resulting in no damages for permanent partial disability and incorrect limitation of total

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[1] C.A.M., no 09-000297-747, July 12, 1977 (Owen, Lajoie, Crete JJ.A.).

[2] "Injured man sues lawyers, awarded $18,250", *The Gazette*, Montreal, July 13, 1977, 3.

[3] A form of those words used in the article, *ibid.*

temporary incapacity to six months. Adjudicating on the cross-demand, the trial Judge said:

> If negligence there was, it would have been in failing to obtain a rogatory commission to examine a Vancouver doctor on the question of permanent partial disability. [This] Court is unable to say that a failure by a lawyer to make use of the various proceedings which the Code of Civil Procedure puts at his disposal constitutes on his part a neglect of duty.[4]

However, the Quebec Court of Appeal disagreed with the ultimate decision of the lower Court. Lajoie J., for the majority, found that the lawyers for Harris had been negligent.[5]

In making that finding, the Honourable Mr Justice Lajoie took considerable time to outline the various facts and circumstances indicating the lawyers' appreciation both of the nature of their client's injuries and of their own obligation to acquire appropriate medical evidence to support their claim. For example, the Court noted that at the first meeting between Quain and Harris, nearly ten months after the car accident, Harris still complained of pain as a result of head injuries and could walk only with the assistance of crutches. It was also apparent to the Court that the Quain firm had spent considerable time in the attempt to gather expert evidence, insisting in correspondence with Harris's lawyer in British Columbia that medical reports of the attending physicians in Vancouver be sent to them. Eventually, the Quain firm acquired such reports and one in particular, prepared by Dr Harry Fahrni (an orthopedist), stated clearly that it was highly unlikely Harris could ever return to his former employment as a blacksmith. However, such reports were never put before the Court and no comparable evidence was ever secured for presentation. Instead, the appellant himself (then some sixty years of age) testified that even though two years had passed since the automobile accident, he was still unable to work as a result of his injuries.

The majority in the Quebec Court of Appeal were not satisfied with that endeavour. Lajoie J., with Crete J.A. concurring, held that while it was not absolutely necessary to establish a rogatory commission to function in British Columbia or to have a medical practitioner come from Vancouver to testify at the Hull trial, the legal firm could have and should have followed any one of a number of procedures:

(i) moved to hold a discovery examination and inquire of the defendant (Ladouceur) if he admitted the length of the total temporary incapacity and of the partial permanent disability;

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[4] That part of the trial judgment quoted by Lajoie J. in *Harris* v. *Quain & Quain, supra,* note 1, 3.

[5] *Supra,* note 1, 5 *per* Lajoie J.

(ii) proceeded under the Civil Code and put the defendant on notice to accept certain expert medical reports even though the physicians themselves would not appear at trial;

(iii) made arrangements to call the doctor appointed by the defendant to examine the plaintiff before trial; or

(iv) arranged for a medical examination of the plaintiff by an orthopedic specialist in the Hull area just prior to trial.

Having noted the different arrangements which the lawyers might have made before trial, the majority judgment then proceeded to consider and summarize the medical and other data and assess an additional sum in Harris's favour to be paid by the Quain firm. At this point Lajoie J. wrote:

> Tenant compte de la durée probable de la vie lucrative de Harris à compter de la fin de son invalidité totale temporaire, de ses gains annuels, des aléas de la vie, aussi de ce que l'atteinte de 15% à son intégrité physique se traduit par une invalidité bien plus considérable, j'estime qu'une somme de $15,000.00 l'indemnisera adéquatement de la perte qu'il subit.[6]

Assuming the judgment in *Harris* is fully applicable in the common law provinces, one may ask what it does to the concept of "barrister immunity" as enunciated in *Rondel* v. *Worsley*[7] and more recently in Ontario in *Banks* v. *Reid*.[8] Or, more generally, can the *Harris* case be seen as a growing tendency on the part of the courts to be less reluctant to find negligence against a lawyer acting in his professional capacity?

Barrister immunity

Some doubts and a considerable amount of concern have been expressed about the doctrine of "barrister immunity" in jurisdictions where the profession of attorney (or solicitor) and barrister are united.[9] Indeed, many[10] would question the merits of barrister

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[6] *Ibid.*, 13.

[7] [1969] 1 A.C. 191 (H.L.).

[8] [1975] 6 O.R. (2d) 404 (H.C.).

[9] See, *e.g.*, comments of Laskin in *The British Tradition in Canadian Law* (1969), 26.

Some jurisdictions have refused to grant immunity to barrister functions. In Victoria, Australia, for example, barristers are expressly liable. See their *Legal Profession Practice Act*, Vict.Stat. 1958, vol.IV, no 6291, s.10(2) (Austl). As for American authorities, see, *e.g.*, *O'Neill* v. *Gray* (1929) 30 F. 2d 776 (2d Cir.).

[10] Opinion expressed in public journals around the time that *Rondel* v. *Worsley* was being considered in the courts shows almost unanimous opposition to immunity. See, *e.g.*, "An anomalous privilege", *The Times*, London, Oct. 22, 1966 and "Usage and abusage", *The New Law Journal*, Oct. 27, 1966.

immunity[11] even where, as in England, the profession is truly separate and distinct from that of a solicitor.[12] But certainly in England no action will lie against an advocate in litigation (whether he is a barrister or solicitor)[13] so long as he has acted *bona fide* and is not guilty of collusion or some other dishonest conduct.[14] Henry J. in *Banks* v. *Reid* makes it clear that in his view "no action lies against a [lawyer] based on his conduct of litigations for his client"[15] even in jurisdictions where the functions of solicitor and barrister are fused in one and the same person. It is submitted here that the *Harris* case is largely in accord with that view although it may not appear so on quick consideration.

First, there are a number of significant pronouncements throughout the majority judgment indicating recognition of a division between the functions performed by a lawyer before trial and those which he does in presenting the case to the court. For example, in interpreting the claim made against the legal firm by Harris, Lajoie J. states at one point:

> [le] demandeur reconventionnel [Harris] ... reproche aux intimés [Quain] *de ne pas avoir pris les dispositions nécessaires* pour établir... que l'invalidité partielle permanente ... était si importante... .[16]

And later, when considering the arrangements that had been made to present the appropriate evidence before him, Mr Justice Lajoie states unequivocally, [i]l eut été facile ... de procéder ainsi *peu avant l'audition* de la première action...".[17] And yet elsewhere his Lordship makes it clear that a lawyer is master of the way in which he conducts a trial:

> En principe, je suis d'accord avec les énoncés du premier juge que l'avocat est maître de conduire le procès de son client de la manière qu'il juge la plus appropriée... .[18]

If that last statement is to have any real meaning it must be interpreted in such a way as to permit counsel, during the trial

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[11] A barrister's immunity was *suggested* in the early 17th century in *Brook* v. *Montague* (1605) Cro.Jac. 90, 79 E.R. 77. And as Lord Reid said in *Rondel* v. *Worsley, supra,* note 7, 227: "[F]or at least two hundred years no judge or text writer has questioned the fact that barristers cannot be... sued...".

[12] In England the legal profession has two separate branches each with its own personnel, regulations, professional body and career structure.

[13] In *Rondel* v. *Worsley, supra,* note 7, 244, *per* Lord Morris of Borth-y-Gest.

[14] *Ibid.,* 287, *per* Lord Pearson.

[15] *Supra,* note 8, 419.

[16] *Supra,* note 1, 4, *per* Lajoie J. (emphasis added).

[17] *Ibid.,* 10 (emphasis added).

[18] *Ibid.,* 5.

process, to decide what to present and how to present it. Surely an advocate, as master of conducting the trial, must have mastery over more than just the *order* in which certain evidence must be presented to the court.

Thus, it is reasonable to assume from the various pronouncements of Lajoie J. that he perceives a division between a lawyer's court-room and non-court-room functions. The general reasoning or result in *Harris* may clearly be seen in that light. Pointing to the lawyers' negligence, the majority judgment concentrates entirely on what the legal firm could have and should have done in preparation for trial. While the lawyers were not bound to utilize the provisions of the Civil Code, they were obliged to take simple and ordinary measures to acquire the appropriate evidence so that the claim could be properly pursued.

In short, the *Harris* case recognizes two relatively distinct functions for a lawyer — those which are preparatory for trial and those which are performed during the adjudicative process. This distinction is largely comparable to the barrister-solicitor division with which common law lawyers are familiar. Thus, while in general a lawyer must provide "des services diligents [et] attentifs"[19] and exercise a degree of competence comparable to that of the "average" practitioner, during the actual trial, "l'avocat est maître de conduire le procès de son client".[20]

The facts and result in *Harris* may also be considered compatible with common law decisions. In *Kitchen* v. *Royal Air Forces Association*,[21] for example, Lord Evershed M.R. found a firm of solicitors negligent:

> [T]he real gravamen of the case ... is that they deliberately allowed the time to run out without getting any instructions at all and *knowing that no expert evidence had been obtained* [by them].[22]

In fact, it has long been held[23] that one of the functions for which a solicitor might be held negligent is improper organization of a case for trial — as summarized by Lord Reid in *Rondel* v. *Worsley*: "[O]btaining the evidence which counsel needed, in taking proofs from witnesses, securing their attendance and the like".[24]

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[19] *Ibid.*
[20] *Ibid.*
[21] [1958] 2 All E.R. 241 (C.A.).
[22] *Ibid.*, 245 (emphasis added).
[23] See, *e.g.*, *Reece* v. *Righy* (1821) 4 B. & Ald. 202, 106 E.R. 912 and *Hawkins* v. *Harwood* (1849) 4 Ex. 503, 154 E.R. 1312.
[24] See *supra*, note 7, 265.

However, as recognized by Lord Upjohn,[25] a solicitor is immune from negligence if, for example, having secured the attendance of witnesses, he later during the trial negligently fails to call one of those witnesses.

The majority in *Harris* took considerable pains to outline the facts and circumstances which should have alerted the appelant's lawyers of the permanent nature of their client's injuries. Lajoie J. then suggested a number of steps that the Quain firm should have taken before trial to obtain the proper evidence to support the claim for permanent disability. The firm's negligence was grounded on their failure to do so.

As stated by Lord Upjohn in *Rondel* v. *Worsley*:

> [A] solicitor acting as advocate will only be immune from the consequences of his negligence while he is actually acting as an advocate in court on behalf of his client... .[26]

However, as noted by Hagarty J. in *Leslie* v. *Ball*,[27] an attorney acting as his own counsel, well aware of certain facts, might still enjoy full immunity if, in the conduct of the case, he declined to notice or produce evidence of those facts.[28] Nevertheless those remarks cannot be construed so as to relieve a solicitor of negligence when he carries out functions which are normally performed by a member of that profession or one who does that type of work. Thus, if a solicitor is obliged to obtain evidence which is needed by counsel and fails to do so, he cannot expect to escape liability for this negligence by later acting as counsel himself. As has often been said, a solicitor cannot shift from himself responsibility for matters which the law presumes him to know.[29]

In *Harris*, the majority judgment focused on what the lawyers should have done to prepare the case for trial. Lajoie J. based his finding of negligence on the failure of the lawyers to do what they themselves recognized as part of their obligation to properly prepare the case. Significantly, the judgment of Owen J.A., dissenting, focused almost entirely on the trial process. Accordingly, he found no evidence of negligence on the part of the respondent lawyers. Indeed, he was prepared to speculate that the small amount awarded in damages might represent an error of judgment on the part of the trial judge. At the same time, however, Mr Justice Owen did concede that one of the factors accounting for the comparatively

[25] *Ibid.*, 285.
[26] *Ibid.*
[27] (1863) 22 U.C.Q.B. 512 (County Ct).
[28] *Ibid.*, 516.
[29] See *Godefroy* v. *Dalton* (1830) 6 Bing. 460, 469, 130 E.R. 1357, 1361.

small award may have been "a decision of the attorneys of record not to produce medical reports".[30] Such a decision, he was sure, did not constitute negligence for which the legal firm or the individual lawyers involved could be held responsible.

Barrister functions

In this author's view, there has always been significant confusion as to when and where a "lawyer's" liability begins and ends or, to use more traditional language, where solicitor functions end and those of a barrister begin. Certainly, the *Harris* case does not offer much direct explanation or guidance on that point, nor does it consider whether a division in relation to solicitor-barrister functions has any foundation in the history or development of the legal profession. Nevertheless, there can be no doubt that the majority judgment draws a line between what a lawyer does before trial (for which he may be held liable in negligence) and the manner in which he conducts a trial (over which he is master).

As suggested earlier,[30a] such a division is quite compatible with the solicitor-barrister division of liability discussed in *Rondel* v. *Worsley*. For example, Lord Reid noted "that solicitors have the same absolute privilege as counsel *when conducting a case*".[31] And Lord Morris of Borth-y-Gest made it clear that it is desirable for the public interest "... to retain an immunity relating only to the limited field *of the conduct and management of a case in court*".[32]

In the same case Lord Upjohn revealed himself to be more willing than the other Lords to widen a barrister's immunity. At one point in his judgment he suggested "tentatively"[33] that a barrister's immunity must start before he enters the doors of the court to conduct the case and extends to advising his client on the prospects of success and on the evidence, to the conduct of the discovery examination and settling pleadings.[34]

Speaking more than a century earlier, Tindal C.J. in *Godefroy* v. *Dalton* noted that the cases up to that time established that a solicitor was

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[30] *Supra*, note 1, 3, *per* Owen J., dissenting.
[30a] *Infra*, p.308.
[31] *Supra*, note 7, 232 (emphasis added).
[32] *Ibid.*, 248 (emphasis added).
[33] *Ibid.*, 285.
[34] *Ibid.*

> ... liable for the consequence of ignorance or non-observance of the rules of practice of this court; *for the want of care in the preparation of the cause for trial;* or of attendance thereon with his witnesses... .[35]

The *Godefroy* case was also concerned with failure to secure appropriate evidence for trial. It was alleged that an attorney had been negligent in conducting the defence of his client by failing to produce sufficient evidence to show that default judgment had been signed against the defendant. To prove that point, the attorney produced only the record book of the court's prothonotary in which was kept a list of the judgments by default signed in each term with the date and the officer's fee appearing beside each entry. The learned Judge who tried the case held that such a book did not constitute proper evidence of the allegations (regarding the default judgment) and nonsuited the attorney's client. But in the negligence action against the attorney, Tindal C.J. held:

> [T]his was not the ordinary case of a direct allegation of a judgment on record, with a plea distinctly putting that judgment in issue; in which case of ordinary and daily occurrence, a neglect in the attorney to provide himself with regular proof of the judgment on record would have classed itself within the description of gross negligence [for which he would be liable].[36]

The issue of damages

The reasoning used in *Harris* to determine the damages to be awarded against the Quain firm warrants serious consideration. It will be recalled that both the trial Judge and the majority in the Court of Appeal were prepared to grant a lawyer full discretion over the manner in which he conducted a trial. Under such a rule, it would seem that there can be no issue of negligence against a lawyer if he decides not to use or call certain evidence during a trial provided it has been made available or, as part of preparing for trial, he took the necessary steps to secure it.

However, in order to assess the damages to be awarded against the legal firm, the Court thought that it should examine the ramifications of the lawyers' failure and consider what the damage award might have been had the appropriate evidence been presented to the trial Court. While this view seems both logical and fair for the parties concerned, it is in fact rather difficult to reconcile with the assertion of the Court that counsel is master of the manner in which he conducts a trial; that is, if the court may assess damages

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[35] *Supra,* note 29, 468 (emphasis added).
[36] *Ibid.*

without regard to the possibility that such evidence may not have been presented even though it had been secured, or the appropriate arrangements for presentation to the court had been made.

Furthermore, it will also be recalled that the majority was prepared to allow the lawyers to choose what steps they might take or, rather, what "type" of appropriate evidence they might arrange to have available for trial. But it would seem that a presentation at trial of evidence obtained by a rogatory commission might certainly carry more weight and influence with some courts than would a written report prepared by a doctor who was neither before the court nor examined by any commission or tribunal. Nonetheless, Lajoie J. felt that either one would have relieved the lawyers of any professional negligence. *The choice was for the lawyers to make.* If that is so, then it seems grossly unrealistic to assume that the court of first instance hearing the damage action would have reacted in the same way whether one "type" of appropriate evidence or another were put before it.

In that regard, it is interesting to note that at trial, Chevalier J. was not in the least impressed with Harris's testimony that the injuries he suffered rendered him permanently partially disabled. On the other hand, Owen J.A. in the Court of Appeal felt that such testimony before another court would have been seen as sufficient to win further damages.

Another disturbing question is what evidence before the Court of Appeal allowed it to assess damages at over $15,000.00 for partial permanent incapacity. The Court of Appeal is not particularly explicit on what was before it. But one thing does seem fairly clear: the Court rendered its decision on the basis of *all* the evidence that it heard and saw relative to the particular heads of damages. If, indeed, the lawyers had a choice as to the type of evidence they might secure, the question remains as to how the Court of Appeal could assert the existence of such discretion on the one hand and then refuse to assess the damages in light of the choices it purported to give the lawyers.

Interestingly, even with the same *quantum* and type of evidence before it, the three member Court of Appeal could not agree on the exact cause of the disability nor the award to be made. For example, Owen J.A. noted that after the plaintiff's left leg had been broken a second time in a hunting accident, evidence of one doctor indicated that there was a partial permanent incapacity of some fifteen per cent. However, he was prepared to attribute only two thirds of that incapacity to the automobile accident. Lajoie J., on

the other hand, given the same medical evidence, saw no causal connection between the second injury and the fifteen per cent disability diagnosed.

It appears, therefore, that it is difficult for a court to assess the medical data before it and arrive at the appropriate causal connections and award. If that is so, it is difficult to see how a court could purport to know (many years later) that, had one of several kinds of appropriate evidence been acquired by the lawyers before trial and presented to the trial court, it would have decided in a certain way.

In *Harris*, however, the trial Judge clearly asserted that "No proper evidence has been introduced to substantiate ... [*inter alia* a] demand of compensation for permanent partial disability".[37]
He said further:

> Despite the sympathy it may have towards [the plaintiff] the Court ... cannot arbitrarily impose upon a Defendant a penalty ... not justified by the evidence at its disposal.[38]

The majority in the Court of Appeal was duly impressed with those remarks and seems to have used them as a point of departure for predicting what the trial Judge would have done had the appropriate testimony been presented: "En retenant ce chiffre, je tiens compte des remarques que fait le juge qui disposa du premier procès".[39] It should be noted at this point, however, that the approach taken by the Court of Appeal in *Harris* in assessing damages is not totally incongruous with that taken by the common law courts in assessing damages against a solicitor who, for example, fails to commence an action within the required time period. Lord Evershed M.R. in the *Kitchen* case explained:

> If ... it is plain that an action could have been brought, and, that if it had been brought, it must have succeeded, the answer is easy. The damaged plaintiff would then recover the full amount of the damages lost by the failure to bring the action originally.[40]

In such circumstances then, the court hearing the negligence action conducts a trial within a trial and attempts to assess what, in its view, the chances for success might have been. Essentially, on the basis of the evidence known to it about the original cause of action, the court is trying to assess what it or perhaps what the "average" court might have decided had the action been brought within the time period.

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[37] That passage quoted in *Harris, supra*, note 1, 2, *per* Lajoie J.
[38] *Ibid.*
[39] *Ibid.*, 13 *per* Lajoie J.
[40] *Supra*, note 21, 250.

In *Kitchen*, each Judge recognized that there would have been serious difficulties with the case before him. Sellers L.J. commented:

> Cases concerning electricity are often difficult and may develop surprisingly in the course of a trial when all the factors are judicially investigated by examination, cross-examination and argument, and, therefore, until judgment, may leave a position of uncertainty in the minds of the contesting parties.[41]

Nevertheless, in that case the Court was unanimous in rejecting the view that it would always be "all or nothing" for the plaintiff. Instead, it approved of considering the evidence that might have been brought at the original action (had it been commenced) and assessing damages on the basis of whether the action might have succeeded or failed absolutely, or whether there was at least "some prospect of success".[42] Accordingly, they approved of the lower Court decision to award a lesser amount (£2000) instead of the maximum (£3000) which was legally possible.[43]

The circumstances in *Harris*, of course, were somewhat different. The action was commenced within the time period and the Court of first instance candidly and explicitly expressed the view that, had the proper evidence been put before it, it would have awarded damages for permanent partial disability. It is probably largely because of that assertion that the Quebec Court of Appeal believed it might accurately predict what the trial Court would have done given the kind of evidence it had heard and seen, and which Chevalier J. had deemed absolutely necessary to support certain claims. Nevertheless, it has been suggested here that the majority in the Court of Appeal should have worked some subtleties into its assessment of damages.

For example, the Court should have considered, in keeping with one of its own assertions, that in preparing the case for trial, the lawyers were obliged only to take steps which would secure *one* or another type of appropriate evidence. It should further have taken into account that a trial court might place a different significance on the different types of evidence secured and that the lawyers, for good reason, might have decided not to present such evidence at

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[41] *Ibid.*, 254.

[42] *Ibid.*, 252, *per* Parker L.J.

[43] In *Kitchen*, *supra*, note 21, there was no appeal against the original award; *i.e.*, the sum *per se*. Nevertheless, each judge expressed the view that the plaintiff's award of £2000 was generous or high. However, each approved of the trial Judge's decision to award less than the maximum (£3000) possible under the *Fatal Accidents Acts, 1846-1908*, 8 Edw. 7, c.7 (U.K.).

trial even though arrangements had been made beforehand. In addition, as suggested in the dissent by Owen J.A., little regard was given by the majority to other factors that might account for the initial award — for example, error of judgment on the part of the trial Judge himself.

Summation and concluding remarks

As reported by the media, the professional negligence found against Quain and Quain in the *Harris* case was grounded in the lawyers' failure to produce appropriate evidence at trial to prove the permanent nature of their client's injuries. That, it is submitted, is an incorrect analysis of the case.

Virtually congruous with the solicitor-barrister dichotomy of liability and immunity enunciated in *Rondel* v. *Worsley*, the professional negligence in *Harris* was attributed to the lawyers' failure to take ordinary and simple means before trial to secure the appropriate medical evidence that might be presented to the Court. The majority judgment makes it amply clear that had the lawyers acquired any one of several "types" of appropriate evidence, they would have been absolved of any negligence. Furthermore, the Court of Appeal seems unanimous in the view that a lawyer is master of the manner in which he conducts a trial.

In assessing damages against the lawyers, the majority in *Harris* may have been better guided if they had carefully considered the reasoning in *Kitchen* or paid greater heed to its own enunciations of law. Unquestionably, the Quain firm was negligent in preparing the case for trial. However, assuming the Court did not wish to award (either expressly or implicitly) punitive or exemplary damages, it would have been correct to consider in some detail the various factors which might have contributed to a trial court's decision to award less than the amount the Court of Appeal saw as appropriate in light of the evidence brought to its attention. In other words, while the additional sum awarded in Harris's favour may accurately have reflected what the injured party should have been awarded to compensate him for his injuries, it does not seem totally appropriate to require the legal firm to pay that sum, if, apart from the lawyers' negligence, there was a good chance that such an amount of money would not have been awarded in any event. To disregard the foibles and weaknesses of those who adjudicate and the choice and discretion a lawyer possesses in the court-room and to attribute the original deficiency in the award entirely to one factor is to be unnecessarily simplistic.

Nonetheless, while the *Harris* case seems to have certain weaknesses, it cannot be said that, as a result of them, it weakens the fundamental discretion a lawyer has in performing his court-room functions. While all do not agree with the policy considerations enunciated in *Rondel* v. *Worsley* for establishing "barrister immunity", more will surely agree that the circumstances and result in *Harris* point as strongly as any other case to the difficulties inherent in trying either to discern or trace the ramifications of a lawyer's negligence in his professional capacity.

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