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Appeal dismissed in contract dispute over Canadian film rights

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Louise Penny's Three Pines mystery books are a Canadian success. Set in the fictional Quebec village of Three Pines, 10 novels have traced Chief Inspector Armand Gamache and the Sûreté Du Québec. Three million copies have been sold in 30 countries. The books have been published in 23 languages.

The appeal concerned whether PDM, an experienced television production company, had validly extended its option agreement to produce a second Inspector Gramache film after successfully releasing their first effort—*Still Life*—on the CBC in 2013.

The dispute arose when PDM sought to finalize the production order for the second Gamache novel, *Dead Cold*, after PDM had extended the Option Agreement for a second time. Three Pines took the position that PDM had tendered an improper amount for the first extension, and that the agreement could only be extended once in any event. After obtaining legal advice, Three Pines explained that the first extension should have included a cheque for \$8,000, not the \$4,000 that PDM had tendered. Three Pines purported to terminate the agreement.

PDM bought an application seeking a declaration that the Option Agreement remained in effect. Three Pines brought its own application seeking a declaration that the option rights had ended.

The application judge concluded that PDM was entitled to the extension, but noted that PDM underpaid by \$4,000.00 on the first extension. The application judge granted relief from forfeiture and permitted PDM to pay an additional \$4,000.00 in compliance with the Option Agreement and maintain the license.

In dismissing the appeal, the Ontario Court of Appeal held that

while the application judge's reasons were "conclusory" and "terse", the context of the application called for urgency. Further, the reasons met the four elements underlying the duty to give adequate reasons set out in *F.H. v McDougall*.

The Court also considered whether the application judge erred in interpreting the Option Agreement. MacPherson J.A. found that the appropriate standard of review was correctness, and that the Option Agreement could in fact be extended twice.

While PDM was permitted to extend the agreement a second time, it admitted that it had mistakenly underpaid by \$4,000. MacPherson J.A. held that the courts have a broad discretion to award relief from forfeiture under s. 98 of the *Courts of Justice Act*. And, while brief, the application judge's reasons touched on all three requirements for relief from forfeiture as restated in *Kozel v. Personal Insurance Co*. PDM was permitted to top-up its payment to Three Pines in order to avoid the harsh consequences of its error.

The decision highlights the considerable deference that will be paid to an application judge on a discretionary, equitable remedy like relief from forfeiture.

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