

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
Cite as: Data General (Canada) Inc. v. Polem, 1998 NSCA 207		
DATA GENERAL (CANADA) INC.	- and -	A. WAYNE POLEM
(Appellant)		(Respondent)
C.A. No. 147621	Halifax, N.S.	HALLETT, J.A. CROMWELL, J.A. (Dissenting)

APPEAL HEARD: November 12, 1998

JUDGMENT DELIVERED: December 29, 1998

SUBJECT: **Contracts - Essential term lacking therefore unenforceable
Quantum meruit - scope of appellate review**

SUMMARY: The trial judge found that there was a contract between the parties whereby the appellant agreed to pay the respondent a sales commission of 10% on a contract of \$1.2 million dollars - \$120,000.00. As an alternative reason the trial judge allowed the claim in *quantum meruit* and fixed the remuneration for the appellant's sales services at \$120,000.00.

The majority held the contract lacked an essential term, namely, what the rate of commission would be and, therefore, was an unenforceable agreement.

With respect to the *quantum meruit* issue, the majority held that an appeal court should be slow to interfere with the trial judge's award in *quantum meruit* unless he erred in law, that is that the trial judge applied a wrong principle of law as by taking into account some irrelevant factor or leaving out of account some relevant one or the award is so inordinately high or low as to be a completely erroneous estimation of the value of the worker's service in question.

The majority held that \$80,000.00 in all the circumstances was reasonable remuneration for the respondent's services having determined that the trial judge erred in law in basing his award of \$120,000.00 on irrelevant matters.

With respect to costs the majority upheld the trial judge's award of costs to the respondent but ordered that the costs be reduced to reflect the reduction in the award from \$120,000.00 to \$80,000.00; as well ordered that the pre-judgment interest be based on the reduced award. As success was divided on the appeal, there was no order for costs of the

appeal.

Cromwell, J.A. in dissent, concluded the trial judge did not err in law and did not assess an unreasonable amount for *quantum meruit*. He would, therefore, have dismissed the appeal with costs. He did not find it necessary to consider whether the May 9th letter exchanged between the parties was a binding contract as found by the trial judge.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S
DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER
SHEET. THE FULL COURT DECISION CONSISTS OF 49 PAGES.**