Was The Cancellation of Life Insurance Valid?

Reporting Case:	*The Bank of Nova Scotia v. Trainor*
Citation:	2009 BCSC 1797
The Court:	In the Supreme Court of British Columbia
Judgment Rendered:	December 30, 2009
Issue:	Was the cancellation of the life insurance valid?
Factual Summary	The bank claimed against the defendant on a mortgage. The defendant argued that a life insurance policy had been taken out when the mortgage was granted, which was cancelled without her consent, or alternatively, was to be reinstated as per her instructions, and accordingly, was available to satisfy the debt, given her husband's death. In or about July 2002, while processing a mortgage renewal, a bank employee found a letter in the defendant's file. The letter instructed the bank to cancel the life insurance. A post-it-note was affixed to the letter, indicating that the signatures on the letter needed to be validated prior to filing the cancelation forms. Despite the delay, the bank employee validated the signatures and proceeded with the cancelation. The validation was completed, notwithstanding the fact that the defendant's signature was in pencil. Later in 2002, the couple had their mortgage and other loans consolidated under a single registered mortgage. The defendant alleged that the cancelled life insurance was discussed at this time and that she had instructed the bank to reinstate the policy.
Decision	The cancellation was valid. According to the trial judge, finding in favour of the bank required impeaching the defendant's credibility. The test of the truth of the witness' account is "its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions." While the signature was in pencil and the defendant continued to maintain life insurance on smaller loans, the evidence suggested that the defendant was not being truthful. The trial judge attached weight to the opinion of a handwriting expert who testified that there was a strong probability that the signature was the defendants. As well, the defendant's evidence of the late 2002 meeting, where she allegedly instructed the bank to reinstate the insurance, was inconsistent, tailored, and in conflict with the general practices of the bankers involved. On this basis, the judge found that the defendant had signed the letter to cancel the insurance and that the bank was entitled to rely on the letter, despite the fact that the defendant's signature was in pencil.