
CANADA / JUDGMENT

Ansley Law Corporation v. Chiu

2012 BCSC 631

COURT

Supreme Court of British Columbia

DECIDED

2 May 2012

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2012 BCSC 631 Ansley Law Corporation v. Chiu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ansley Law Corporation v. Chiu,

2012 BCSC 631

Date: 20120502

Docket: S095252

Registry: Vancouver

Between:

C.M. Ansley Law Corporation d.b.a.

Ansley & Company

Solicitors

And

Sak Keung Chiu & Tak Kuen Chong

Clients

Before: Master Taylor

Reasons for Decision

Counsel for solicitors:

C.M. Ansley

The clients:

appearing in person

Place and Date of Hearing:

Written Submissions:

Vancouver, B.C.

January 10 - 14, January 17 - 19, March 23 - 25, April 26 & 27,

July 6 & 7, 2011

September 30, 2011,

October 21, 2011, November 9, 2011, December 12, 2011

Place and Date of Judgment:

Vancouver, B.C.

May 2, 2012

Introduction

- [1] This terribly long saga began when the clients purchased a property in North Vancouver and moved in on July 28, 2005. Shortly after, the clients were approached by a neighbour, Mr. Friesen, about wanting to trim trees in and about the clients' property in order to afford him an ocean view from his home.
- [2] On or about September 25, 2005, the male client, Sak Chiu, was invited by Mr. Friesen to Friesen's home in order to see what his view was like from his balcony. A discussion ensued and photographs were allegedly shown to Mr. Chiu which apparently had been taken from Mr. Friesen's balcony. The clients' evidence is that the photos clearly showed that one half of the trees were shorter whereas trees on the other side of the property were very tall but not blocking Friesen's view. Mr. Friesen is alleged to have told Mr. Chiu that the shorter trees were from a previous trimming. Thereafter, Mr. Chiu and Mr. Friesen attended the Chiu/Chong residence to discuss which trees Mr. Friesen could trim.
- [3] Mr. Chiu then signed an agreement with Mr. Friesen allowing Friesen to cut and trim the previously trimmed trees.
- [4] According to Ms. Chong, on the morning of September 28, 2005, Mr. Friesen arrived to trim the trees with four other men hired for the purpose. She claimed that not only were the agreed-upon trees trimmed, but also others that did not affect Friesen's view of the ocean.
- [5] Ms. Chong attempted to stop the cutting of her trees but was rebuffed by Friesen who told her her husband had signed an agreement, and that if she was to stop him in some fashion that he, Friesen, would sue her.

- [6] Following the insult to the trees, to which they took great exception, Ms. Chong and Mr. Chiu arranged for the erection of some cables and large banners which would block Friesen's view of the ocean. They also hung up the Canadian flag, the Chinese national flag and a banner with the words, "You damaged my trees".
- [7] The clients had also hired an arborist who expressed some concern for the stability of the slope adjacent to their home as the highest point of the slope was higher than the roof of their home.
- [8] Matters between Mr. Chiu, Ms. Chong and Mr. Friesen escalated thereafter. The clients allege Friesen distributed a defamatory letter around the neighbourhood questioning the state of Ms. Chong's mental health, calling her anti-social, alleging she butchered her own trees and saying she insulted the Canadian flag. Accordingly, she took down the Canadian flag.
- [9] Around this time, the clients picketed Friesen's work place where he was a CEO of a small company. As a result of the picketing and the substance on the handbills given out by Ms. Chong and Mr. Chiu, Mr. Friesen lost his employment.
- [10] Within a short span of time, Ms. Chong noticed her flag and banners were missing. Mr. Friesen is alleged to have told her he removed the flag and banners, and she wasn't to erect anymore because if she did, he and 40 other people would chase her out of the neighbourhood.
- [11] The clients expressed concern that they were constantly under attack as items were being tossed into their yard, and they discovered the windshield of their car was damaged.
- [12] In February, 2006, the clients hired a lawyer in North Vancouver with the intention of commencing a small claims action to seek recompense for the damage to their trees.
- [13] They also installed a surveillance camera to ensure their own safety.
- [14] On May 9, 2006, the office of the clients' first lawyer received a demand letter from Mr. Friesen's lawyer seeking an admission that Friesen had not damaged their trees, that the clients had defamed him and seeking an apology.
- [15] The clients were of the view that they didn't have to apologize. Mr. Friesen subsequently commenced an action against the clients for defamation on May 26, 2006.
- [16] In July, 2006, Mr. Friesen sought an injunction prohibiting the clients from erecting banners in their own yard. In the supporting affidavit, Friesen deposed that the clients' fence and some of the trees were on municipal lands. He confirmed this assertion by saying he had been the contractor who built their house some 10 years earlier and attached survey plans in support.
- [17] Unfortunately for the clients, they were unsuccessful in defending against the injunction application. Their lawyer at the time encouraged them to settle for \$5000.00.

- [18] The clients took the position that they were protesting an affront to their dignity and human rights similar in kind to the Falun Gong.
- [19] As it turns out, the clients had either seen Mr. Ansley representing the Falun Gong, and/or they contacted a member of Falun Gong to find out the identity of the lawyer representing the group. Thereafter, the clients contacted Mr. Ansley's office in Courtenay, B.C.
- [20] The first meeting between clients and solicitor took place at the home of Mr. Ansley's paralegal, Maggie Ma, on September 5, 2006. After discussion between the clients, Ms. Ma and Mr. Ansley, the clients provided Mr. Ansley with a \$10,000.00 retainer cheque, and, after returning to the mainland, the clients executed the retainer agreement and faxed it back to Mr. Ansley's office the next day.
- [21] According to Ms. Ma, the complete file transfer from the previous lawyer's office to Mr. Ansley's office did not occur until October 4, 2006. In any event, the task in the office following the receipt of the file material and instructions, was to start revising the drafted counterclaim that had been commenced by previous counsel. Ultimately, the counterclaim was filed in mid-January, 2007.
- [22] Ms. Ma's evidence is that throughout this time there were numerous emails from the clients which Georgina Lee, as Mr. Ansley's associate counsel at the time, tried to incorporate into the various drafts. The evidence from both of these employees is that the clients kept changing their instructions regarding the counterclaim and, in fact, wanted to change the number of people being sued by way of counterclaim from 2 to 4 to 8. Much time had to be spent convincing the clients that many of the people they wanted included in the counterclaim were not proper defendants, such as Mr. Friesen's wife and daughter, or were too far removed from any claim the clients may have had.
- [23] Matters progressed slowly through the spring and summer of 2007. A meeting was set up with the clients in Courtenay for August 23, 2007 at the instigation of Mr. Ansley. Ms. Ma, Ms. Lee and Mr. Ansley have all given evidence that an agenda had been prepared for the meeting with the clients including the agenda item of cost of the litigation for the client. All have given evidence that this is the first time such a speaking point had been raised, and in fact, it had not been raised by the clients at all prior to this meeting.
- [24] Evidence about this meeting between lawyer and clients on August 23, 2007 is that once the issue of cost was raised, Mr. Chiu asked what the possible cost could be for the continuation of their case against Mr. Friesen. Mr. Chiu was given a possible estimate of \$200,000.00 to which he asked whether or not Mr. Friesen would have to pay the same amount. Mr. Chiu seemed satisfied when advised that Mr. Friesen's legal costs would likely be the same or more than that of the clients.
- [25] The trial in the matter was set for 15 days commencing January 19, 2009. A settlement between the parties was reached on January 17, 2009 and, accordingly, the trial was adjourned.

- [26] There then arose a disagreement over the terms of the settlement reached and then more negotiations continued throughout the next few months, until a settlement was finally agreed to and signed on May 28, 2009. As a term of the agreement, the clients paid \$30,000.00 in damages to the plaintiff.
- [27] The disagreement over the terms of settlement involved terms of confidentiality, or whether there even should be such a term in the agreement and whether, over the long run, Mr. Friesen should have on-going access to some of the trees for trimming. Allegations of bad faith were also made.

The Scope of a Review Pursuant to the Legal Profession Act

- [28] Section 71 of the Legal Profession Act is the legislation which provides as to what can or should be considered by the registrar as set out herein:
- (2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:
 - (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
 - (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
 - (3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:
 - (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
 - (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.
 - (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
 - (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,

- (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

[29] It is important to note the requirements as set out in the statute as the clients have taken the position throughout the 15 days of the hearing that:

...the fees the Lawyers charged the clients in this case were entirely unreasonable and was [sic] of no value on the basis that the Lawyers lacked skill, knowledge, and responsibility, the magnitude of the errors, the excessive hours, the lack of timely and proper advice, the contradicting advices [sic], the poor result, and because the lawyers did not follow the Retainer Agreement, acted without instructions, failed to carry out his instructions competently and adequately, and took unnecessary or counter-productive steps to the case.

[30] In other words, everything is in issue.

[31] It must be noted that the detail which was brought to this hearing was no less than extraordinary. Initially, the solicitors set this matter for hearing for three days, yet in the end, the hearing took 15 days spread over six months. As well, I was presented with numerous exhibits including four binders containing 1353 pages of emails, both internal and between the clients and the solicitors from September 1, 2006 to July 23, 2009; 2 full binders of pleadings and motions in the original matter; two further binders submitted by the clients containing correspondence and emails during the same period as set out above; a binder containing all of the accounts of the solicitors in the substantive matter; two expert opinions; 53 pages of written submissions from the solicitors; 337 pages of written submissions from the clients; eight pages of rebuttal by the solicitors; and a further 11 pages of the clients' reply to the rebuttal.

[32] Needless to say, the court has been asked to examine every detail of the case and the representation by the lawyers of the clients in what was a most difficult and exasperating case for all parties involved, as well as their lawyers.

[33] I observe that due to the complexity of the issues in the main action, the clients' unfamiliarity with the process of the assessment procedure and rules of court, the amount of documentation provided in the assessment hearing, the emotional issues experienced by the clients in the main action, the clients' desire to obtain some form of satisfaction or acknowledgement of their suffering, and, in my view, to "take it out on somebody", this has been a most difficult, and, at the same time, compelling assessment pursuant to the Legal Profession Act.

[34] I should also say, that were I to assess every matter raised by the clients in this hearing, I would be exceeding my jurisdiction, as to do so would essentially require me to make a determination as to whether the solicitors were negligent in their representation of the clients, which is not my mandate. That type of inquiry is for another forum. Accordingly, I intend to embark upon an examination of the criteria as set out in subsection (4) of the Legal Profession Act and to deal with the evidence as required in dealing with those criteria.

(a) the complexity, difficulty or novelty of the issues involved

[35] Here I intend to quote extensively from the two expert opinions produced by the parties at this LPA hearing. Firstly, I quote from the report of Roger D. McConchie, the clients' expert, dated August 23, 2010, where at page 2 under the heading, Opinion, he says this:

Defamation litigation is inherently complex.

In my view, the special characteristics of defamation litigation include the following:

1. Defamation pleadings are of vital importance. Lawsuits may be won or lost depending on the skill with which a litigant prepares his or her statement of claim, statement of defence, or reply to the statement of defence;

...

3. the conduct of the defendant and his or her legal counsel before, during and after publication of the defamatory expression will come under a microscope at trial;

...

9. special costs may be more likely to be awarded to a successful plaintiff because of the intense scrutiny of a defendant's conduct which is typically performed in defamation litigation.

Emotion often plays a disproportionate role in libel litigation. Much like family litigation, individual emotions frequently run very high in defamation lawsuits.

If a plaintiff's outrage can be assuaged by a prompt, sincere and effective retraction and apology, and an undertaking not to republish the expression complained of, a defamation complaint may quickly be put to rest.

There is another distinguishing feature of defamation litigation. Except in the most straightforward cases, libel lawsuits tend to be enormously expensive both for the plaintiff and for the defence. This arises not only from the complexity of the law and the special care that must be paid to the conduct of the litigation, but also because of the on-going thorough investigation of facts relevant to issues of malice and the conduct of the parties throughout the litigation.

[36] And again at page 5 and under the heading, Specific Complexity, Mr. McConchie says this:

The factual matrix in *Friesen v. Chiu and Chong* is complex involving as it does allegedly defamatory banners, drawings, posters, letters, television broadcasts on English-language and Chinese-language television, articles in two local newspapers, words painted on fences, sandwich boards, signs, circulars, and picketing of the plaintiff's place of business. The publications complained of by the plaintiff in his pleadings begin in mid-October, 2005, increase in tempo in early 2006, and allegedly continue to the filing of the lawsuit on May 26, 2006.

The plaintiff's allegations of defamation originate in a dispute over tree-cutting on the defendants' property which gave rise to allegations by the plaintiff of breach of contract, nuisance, invasion of privacy, conspiracy and harassment.

The defendants counterclaim in January 2007 for defamation against the plaintiff added an additional lawyer [sic] of complexity. The counterclaim included, among other things, defamation claims against the plaintiff relating to letters, signs, statements to police, and television broadcasts. Related claims of property damage to trees and banners, assault and battery, trespass and nuisance are also made against the plaintiff and a third party.

[37] The solicitors retained Bryan G. Baynham, QC as an expert for the LPA review. Mr. Baynham authored a report dated July 14, 2010. I quote from page 2 of that report:

In my experience, both tree cutting cases and defamation actions are hard fought because they involve matters of principle. A defamation action involves "who you are" and tree cutting cases involve "where you live". For many people that is almost as important as "who you are". Invariably, plaintiffs and defendants react emotionally, as opposed to rationally, to this type of litigation. This is clearly what happened in this case.

In my years of practice I have been involved in numerous "unauthorized tree cutting" cases and many defamation actions. While it is not uncommon for a tree cutting case to involve some element of defamation, I have never seen a case get so far out of hand before either party retained counsel.

[38] The two reports quoted from above capture the essence of the difficulty and complexity of the issues involved in the original case. As well, Mr. Ansley was instructed by the clients when he was first retained by the clients that this was a matter of principle and that he was to go to court no matter what it cost. Principle is the most difficult and costly of all matters in litigation to represent and to pursue on behalf of a client, and it definitely adds to the complexity of any case.

(b) the skill, specialized knowledge and responsibility required of the lawyer

[39] According to Mr. Ansley's resume, he speaks and reads Chinese, has a L.L.M. degree from the University of London, was a former professor of Chinese History and Civilization, and Law, having taught at the University of Windsor, the University of British Columbia, the faculty of Law at Fudan University in Shanghai and the Faculty of Law at Jiaotong University of Shanghai. Thus, it could be assumed that Mr. Ansley, as the solicitor for the clients, had some skill and knowledge of the matters for which he was retained. It is also to be

remembered that the clients viewed their case as one involving their human rights and for that purpose sought out Mr. Ansley for what they believed was his expertise and experience in human rights law.

[40] It is difficult to understate the responsibility required of a lawyer any time he or she accepts a retainer to represent a client. However, in the case where the clients retained Mr. Ansley, the responsibility he accepted in taking on this case was enormous. Not only did Mr. Ansley accept that responsibility, he also responsibly told the clients when a mistake had been made in the billing and corrected it. As well, Mr. Ansley advised the court early in his evidence about billing mistakes and, in fact, advised the court about the total lack of work product done by one, Cotter, on the clients' file. In this regard, Mr. Ansley discounted any work performed by Mr. Cotter to zero.

[41] In regard to this category, Mr. Baynham says this at page 2 of his report:

When Mr. Ansley assumed conduct of the matter in September 2006 pleadings had been exchanged, as well as Demands for Particulars. The plaintiff had also sought an injunction before Mr. Justice Ehrcke, which, I understand was granted.

The problem Mr. Ansley faced at the outset was that a portion of the defamation claim was virtually indefensible. Given this reality, he adopted the best strategy available, that being, the best defence is a good offence. The most he could hope for was a modest judgment in favour of the plaintiff. He hoped to achieve this result by bringing a counterclaim for defamation, trespass and nuisance, to offset the plaintiff's claim for defamation which was almost certain to succeed.

This strategy only works if counsel for the defendant mounts a very vigorous defence, such that the plaintiff and his counsel are convinced that the defendants will see the case through a trial, if that is what it takes.

Mr. Ansley did just that. He was prepared to proceed to trial and the plaintiff knew that to be the case. Faced with this reality, counsel for the plaintiff made a very modest settlement offer, which ultimately led to a \$30,000.00 settlement.

Mr. Ansley forcefully urged the clients to settle, because their liability position was precarious and the costs of proceeding to trial, including a judgment, costs (possibly double costs), and legal fees from that point forward, could easily reach \$250,000.00.

In summary, Mr. Ansley treated this as a matter of principle, fought long and hard for the defendant, and achieved a very favourable outcome.

[42] Mr. McConchie had a different view of the manner in which the client's case was handled by the solicitors. He was critical of the counterclaim filed by the defendants, and set out nine areas in which, in his opinion, the pleas of defamation alleged against the plaintiff are deficient. Mr. McConchie was also critical of the conduct of the plaintiff's examination for discovery and opined that questions sufficient to identify the plaintiff's claim for malice and resulting damages that may or may not have been suffered by the plaintiff were not asked.

He also noted that the statement of defence did not provide particulars of the facts supporting the defence of fair comment nor did it provide particulars of the general imputations complained of in respect of which justification was pleaded. Accordingly, Mr. McConchie felt that examining counsel did not have an important checklist of facts to address during the discovery.

[43] Lastly, in a fairly lengthy description, Mr. McConchie felt that the examination for discovery of the plaintiff was not handled as well as it could have been. I think it fair to say that this comment is particularly critical of a lawyer who holds himself out as a practitioner who limits his or her practice to defamation suits, but not necessarily to those who do not, but surely, Mr. McConchie speaks of a standard to which any solicitor involved in a defamation action should aspire. However, the question of whether or not the standard has been met as set out in Mr. McConchie's opinion is not for this assessment.

(c) the lawyer's character and standing in the profession

[44] No issue was made of this by the client and aside from the items quoted from Mr. Ansley's resume, there is no evidence before me of any exceptionally distinguishing items in Mr. Ansley's character or standing in the profession, or for that matter, anything negative regarding these items. It is to be noted, however, that it appears the clients sought out Mr. Ansley for special reasons, which included his human rights profile and the fact that he is familiar with Chinese people and their culture. Notwithstanding, I view this criterion as completely neutral.

(d) the amount involved

[45] The amount involved is \$169,000.00 in fees, plus disbursements and taxes. The fees were for all work performed by the solicitors from the date of retainer on September 5, 2005 to and including the finalization of the settlement agreement on May 25, 2009. The clients have taken no particular issue with any of the fees specifically, they just say, retroactively, that they believe they shouldn't have had to pay anything at all. The clients have addressed a few minor disbursement issues that will be dealt with in my final determination.

(e) the time reasonably spent

[46] Given the stated complexity of defamation litigation, I am indebted to the two opinions provided by the parties in this assessment. Under this heading in his opinion letter of August 23, 2010, Mr. McConchie says this commencing at page 6:

In my opinion, the effective conduct of defamation litigation requires extensive investigation and analysis at the initial stages of counsel's retainer.

Even if counsel is very familiar with defamation case-law, and extensive legal research may not be necessary, there is certain technical analysis which should not be avoided or put off and which sometimes cannot be effectively delegated to junior counsel, paralegals or private investigators.

...

I stress: I have not interviewed the solicitor of the clients and therefore do not know which, if any, of the steps I describe below was actually performed or not performed.

I also acknowledge that each litigator has his or her own style, temperament, experience, methodology, techniques, and inherent personal strengths and inherent weaknesses. What works for one lawyer may not work for another. Five entirely competent, experienced lawyers may do the same thing very different ways.

[47] Mr. McConchie then goes on at some length to describe what steps, in his opinion, should have been undertaken in the defence of the defamation action, but does not ascribe an amount of time to any of the steps suggested. However, a plain reading of the suggested steps indicates to me that a considerable amount of time would be required to complete all of them and in the amount of detail suggested.

[48] In his report of July 14, 2010, Mr. Baynham says this, beginning at page 3:

Turning to the number of hours required to defend this claim and pursue the Counterclaim, I have taken into account that tree cutting disputes and defamation actions are, by their very nature, very hands on, time intensive, cases to handle. In my experience, clients are demanding and very engaged. They require much more "hand holding" than would normally be the case in a commercial or property dispute. It is often the case that settlement is not a realistic option until the eve of trial. Only then do the clients have a full appreciation of what it takes to fight a matter of principle through trial and the costs associated with that fight.

Based on my review of the pleadings, correspondence and the accounts, I broke the case into eleven components, in order to come up with an overall fee of \$240,000.00. Set out in the remainder of this opinion are the components, as I saw them, and the amount of legal fees I attributed to each component. I recognize that this is a very rough and ready exercise that is dependent on my analysis of the material provided to me. For that reason, my opinion could easily be 10% low or high, such that a fair fee could be as little as \$215,000.00 or as much as \$265,000.00.

[49] Mr. Baynham then went on to describe the various stages of the litigation and his fee estimate for each. His stages include: assuming conduct of the file; amending the statement of defence, drafting the counterclaim, adding a defendant by counterclaim and reviewing applicable law; general correspondence; document production/disclosure, preparing database and chronology; notice to admit/interrogatories; responding to demand for particulars; preparing for and attending at examinations for discovery; instructing experts; obtaining RCMP reports, obtaining witness statements; preparing motion and supporting affidavits to obtain an injunction; preparation for trial; and post-trial dispute/negotiations/settlement.

[50] As an example of one of the stages of the litigation and as an example of the difficulty attached to this file, I quote from Mr. Baynham's paragraph under the heading, Post-Trial Dispute/Negotiations/Settlement at page 6 of his report:

Like everything else, concluding settlement was an acrimonious and protracted exercise. It took counsel a full five months to finalize settlement which, in the end, involved no more than paying \$30,000.00, signing a Mutual Release, and entering a Consent Dismissal Order. Counsel for the plaintiff went so far as to bring an application to enforce settlement. As noted earlier, the settlement would have collapsed were it not for Mr. Ansley's dogged determination to prevent his clients from letting their emotions override common sense. I estimate that a fair fee for concluding settlement would be \$10,000.00.

[51] One of the time factors involved in the representation of the clients in this case could be described as mollifying the clients or some extreme 'hand holding'. Mr. Ansley spent some considerable time over the course of his retainer attempting to placate his clients by writing lengthy emails to them about "Canadian Justice" and the clients' fundamental rights in a free and democratic society, and explaining to them that they had been grossly wronged and that he understood their sense of being treated poorly by the plaintiff. At the very least, Mr. Ansley was acknowledging his clients' sense of frustration in the whole process, however, it begs the question as to whether or not this was absolutely necessary in the course of his retainer.

(f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable

[52] The clients signed a retainer agreement dated 5 September, 2006 in which they agreed to pay Mr. Ansley \$250.00 per hour for his legal work; \$150.00 per hour for Georgina Lee, the firm's associate lawyer, and \$100.00 per hour for work done by the firm's paralegal, Maggie Ma. Given Mr. Ansley's year of call and his experience prior to accepting the clients' retainer, this is a most reasonable rate. Indeed, Mr. Baynham's opinion is that a reasonable rate for Mr. Ansley at that time would have been between \$350 and \$450 per hour, and, for a junior, depending on the year of call, from \$150 to \$250 per hour.

[53] In fact, part way through the litigation and from and after August 18, 2008 and at the request of the clients, Mr. Ansley reduced his hourly fee rate from \$250 per hour to \$200 per hour, including time spent during discoveries. From December 17, 2008, Mr. Ansley voluntarily reduced his hourly rate from \$200 per hour to \$100 per hour, and ultimately told the clients that any further work done on their file by Mr. Ansley after February 24, 2009 would be without charge by Mr. Ansley, although he would continue to charge for any work done by the associate lawyer or paralegal.

[54] Considering all of the circumstances of the case, I find Mr. Ansley's hourly rate and that of his associate lawyer most reasonable.

(g) the importance of the matter to the client whose bill is being reviewed

[55] It is difficult, if not impossible, to overstate the significance of the matter to the clients given all of the circumstances. This case consumed the clients for over three years. It was a matter of principle as well as emotion. My sense is that at least Ms. Chong lived and breathed the case on a daily basis to the point where it began to affect her health.

(h) the result obtained

[56] Firstly, I quote from Mr. McConchie's opinion letter at page 6:

In my opinion, the settlement that was eventually achieved in early 2009 was a reasonable resolution of all complaints and cross-complaints.

[57] He does, however, qualify his opinion in the following words:

Nevertheless, it is also my opinion, however, a motivated plaintiff and motivated defendant, guided by reasonable and timely legal advice, should have been able to achieve such an agreement in the fall of 2006 when the situation was ripe for resolution. (my emphasis)

...

I cannot of course say whether any settlement was possible given the apparent animosity between the parties. Sometimes parties have to be driven to the point of financial and emotional exhaustion before they settle. However, the material I reviewed does not reveal whether or not appropriate advice was given to the clients which might have motivated them to seek a compromise before embarking on the course that was actually followed. I also cannot say, of course, whether appropriate advice would have been accepted by the clients.

[58] Mr. Baynham says this at page 3 of his report:

Mr. Ansley forcefully urged the clients to settle, because their liability position was precarious and the costs of proceeding to trial, including a judgment, costs (possibly double costs), and legal fees from that point forward, could easily reach \$250,000.00.

In summary, Mr. Ansley treated this as a matter of principle, fought long and hard for the Defendants, and achieved a very favourable outcome.

[59] Without the benefit of these two opinions, the court would have had no idea as to whether or not the outcome of the case was a reasonable or favourable one. Suffice to say that defamation law is a relatively unique and esoteric area of the law in which very few practitioners have experience, so the court is obliged to the parties for providing the opinions of two experience practitioners for the court's benefit.

General Comments and Observations

- [60] It was only after the settlement agreement was finally executed in May of 2009, when the clients suggested they wanted to sue someone else and were forcefully talked out of it by Mr. Ansley that the clients then announced that it was their intention to tax the accounts of the solicitor. Until then, they had never given any hint of being dissatisfied with their representation or, for that matter, the fees charged.
- [61] This assessment was hard fought as between solicitor and clients. The solicitor because he has been accused of incompetence, and misrepresenting facts. When the solicitor attended a meeting with the clients in order to attempt a reconciliation of their differences in order to resolve the fee dispute, the solicitor found it necessary to leave the meeting after having been called a liar by Mr. Chiu.
- [62] Ms. Chong gave evidence for the clients which was followed by Mr. Chiu taking the witness stand to say that everything said by his wife was true. That was the extent of his evidence.
- [63] In arriving at my decision, I have had to make an assessment of the credibility of Ms. Chong, which is not an enviable task in the circumstances.
- [64] It was obvious to me that this case meant a great deal to Ms. Chong and that for some reason she felt wronged by Mr. Ansley's representation of their case. On more occasions than I recall, I had to remind Ms. Chong to answer the question put to her in cross-examination rather than giving an answer to a question she wished she had been asked. She also sought to rationalize her answers to tough questions.
- [65] Ms. Chong, her husband, Mr. Chiu, and their son, who assisted them in the cross-examination of the witnesses for the solicitors, and carried out the direct examination of Ms. Chong, believe that every word, letter, exchange, idea, document created, instruction not followed, or otherwise were all subject to review during this assessment, which, as I have said earlier in these reasons, is not my mandate. For example, the clients are unable to understand in this context that instructions allegedly not followed were not followed because to have done otherwise would have jeopardized the clients' position, not buttressed it. In that regard, the solicitor is to be commended for not blindly following the clients' instructions.

Decision

- [66] After much reflection, I have determined that a small reduction to the solicitor's overall fee account is to be made. This is to take into account some of the time taken to write letters to the clients who may not have had a direct bearing on the substance of the case, but more in the "acknowledgement" category, and any other similar miscellaneous matters. As well, the reduction is meant to account for any minor disbursement errors not already accounted for by the solicitors.

- [67] I determine that a fair and reasonable fee in all the circumstances of this case is \$165,000.00.
- [68] I therefore order that the solicitor's fee account be reduced to \$165,000.00 with the result that all required taxes and all disbursements charged be paid by the clients to the solicitors. In particular, I order the clients to pay the outstanding invoices of the solicitors in the amount of \$19,599.00 less \$4,000.00 for a total of \$15,599.00. As well, the clients are ordered to pay the sum of unpaid disbursements in the amount of \$6,978.25 plus applicable taxes.
- [69] I note that the solicitors have asked for an opportunity to address the court on the matter of costs, irrespective of whether the court allows all of the solicitors' fees or disallows some items. The solicitors' justification is that there is information which they feel should be made available to the court on the matter of costs alone and, further submit that the recent changes to the Rules of Court make it easier for a registrar to exercise discretion in applying the one-sixth rule set out in s. 72 of the Legal Profession Act.
- [70] The wording of s. 72(1) is mandatory in that it determines that costs of a review of a lawyer's bill must be paid by:
- (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
- [71] In the current case, I have taxed off much less than 1/6 of the lawyer's bill and accordingly, the clients are responsible to the solicitors for their costs incurred as a result of this review.
- [72] However, s. 72(2) provides that the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in subsection (1).
- [73] Should the solicitors wish to address me on special circumstances which may have existed in this review, I will entertain a request for same if made within 30 days of the date of this judgment. However, should the solicitors be contemplating something other than straight costs for this review, then I commend to them the decision of *Label v. Albanese*, 2008 BCSC 1679 regarding costs following a review, and in particular, paragraph 6 of that judgment, as well as the decision of *Winstanley v. Oldaker*, 2008 BCSC 1561. If no request is made within 30 days of the date of this decision, then the solicitors shall have their costs following taxation of same.

"Master G. Taylor"

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