

CANADA / JUDGMENT

Baumgartel Gould v. DaCosta

2001 BCSC 869

COURT

Supreme Court of British Columbia

DECIDED

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2001 BCSC 869 Docket:

S058909

Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA RE: THE LEGAL PROFESSION ACT

BETWEEN:

BAUMGARTEL GOULD
SOLICITORS

AND:

JOSE NUNES DACOSTA
CLIENT

REASONS FOR DECISION

OF

DISTRICT REGISTRAR SAINTY

Counsel for the Solicitors W. Lee

Counsel for the Client M. Azevedo

Date and Place of Hearing/Trial: May 23, 2001

New Westminster, BC

[1] On or about March 25, 1996, Mr. DaCosta (the "Client") retained Baumgartel Gould (the "Solicitors") to act on his behalf in connection with his divorce.

- [2] The Client signed a retainer agreement dated March 25, 1996 pursuant to which agreement the Solicitors agreed to act on behalf of the Client. The work to be done in respect of this matter was to be performed by Mr. Goodwin who testified at the hearing. The Client had previously retained the Solicitors to advise him with respect to his legal affairs, including his separation from his spouse in or about 1988.
- [3] The Solicitors provided a variety of services to the Client over a four-year period in connection with the Client's divorce. The Solicitors provided accounts to the Client totalling approximately \$59,000.00 from March 1996 through April 1999.
- [4] The Client paid most of the accounts rendered. As at April 7, 1999, the Client owed the Solicitors \$16,464.04 (fees, disbursements and taxes) on the accounts.
- [5] On May 18, 1999, the Solicitors and the Client entered into an agreement entitled Settlement Agreement (the "Settlement Agreement") wherein the Client agreed to pay the Solicitors the sum of \$12,000.00 in full and final satisfaction of the outstanding account of \$16,464.04, plus interest accrued thereon.
- [6] The Settlement Agreement provides as follows:

WHEREAS:

A. The Client entered into a retainer agreement with the Law Firm [the Solicitors] dated March 25, 1996;

B. The Law Firm performed services on the instructions of the Client and rendered the following accounts for legal fees and disbursements:

[The dates and amounts of the accounts totalling \$59,182.42 are set out.]

C. The balance owing on the accounts rendered to the Client as at April 7, 1999 is the sum of \$16,464.04.

D. The Retainer Agreement provides that accounts not paid within 30 days of their date shall attract interest at the rate of 18%, compounded annually, until paid.

E. The Client and the Law Firm wish to resolve the outstanding accounts by way of settlement without an assessment of the accounts before the Registrar as provided by the Legal Professions Act.

IN CONSIDERATION of the further payment of \$12,000.00 by the Client to the Law Firm the parties agree as follows:

1. The Law Firm shall accept the sum of \$12,000.00 in full and final settlement of the outstanding account of \$16,464.04, plus interest which may be properly chargeable pursuant to the Retainer Agreement.

2. The Client waives and releases the Law Firm with respect to any right of review of the Law Firm's accounts as set out in the recitals to this agreement.
3. The parties acknowledge and agree that the account dated April 7, 1999 is a final account with respect to the services performed.
4. The parties agree that in the event the Client wishes Baumgartel Gould to perform further services, that all further services from the date of this agreement will be rendered pursuant to a new Retainer Agreement entered into between the Client and the Law Firm.
5. This agreement shall enure to the benefit of and be binding upon the parties, their heirs, executors, administrators, and assigns.
- [7] The Settlement Agreement was signed on May 18, 1999. Mr. Da Sousa (a friend of the Client who attended the meeting at the Solicitor's office with the Client) witnessed the Client's signature. Mr. Gould, a partner in the Solicitors' firm, witnessed Mr. Goodwin's signature.
- [8] The Client and the Solicitors entered into a new retainer agreement on May 18, 1999 and the Solicitors continued to act for the Client in the divorce proceeding.
- [9] The Solicitors rendered two accounts to the Client under the new retainer agreement, totalling \$6,720.22.
- [10] On March 29, 2000, the Client took out an appointment to review the Solicitors' accounts, including the accounts covered by Settlement Agreement.
- [11] The appointment to review the accounts came before Master Bolton (as Registrar) on May 9, 2000 who ordered THAT:

On the Application of the Solicitor, the Appointment to review the Bills of David Goodwin be adjourned generally;

On the Application of the Client, the Appointment filed herein on March 29, 2000 be amended to include an Appointment for the examination of the Fee Settlement Agreement between the Solicitor and the Client dated May 19, 1999, said amendment to be effective this day;

The Client provide to the Solicitor, within 14 days of this Order, written particulars of the facts the Client intends to rely upon as to (1) why the Fee Settlement Agreement dated May 18, 1999 is unfair and unreasonable and (2) the Client's objections to the Fee Settlement Agreement in general terms;

Any reply by the Solicitor to the Client's particulars be provided in writing to the Client no later than 14 days after the Solicitor's receipt of the Client particulars;

The Solicitor provide to the Client, within 7 days of this Order, copies of any notes made with respect to the execution of the Fee Settlement Agreement dated May 18, 1999 or the Retainer Agreement dated May 18, 1999.

[12] The Client filed an appeal of Master Bolton's decision on May 23, 2000, seeking an order that the amendment of the appointment be effective the date the appointment was first filed. On June 13, 2000 Singh, J. ordered that:

The appeal from the decision of Master Bolton of May 9th 2000 is hereby adjourned generally and;

The application by the Client to amend the Appointment to the original date that it was filed on March 29th 2000 be remitted back to Master Bolton.

[13] Master Bolton reheard the matter on November 8, 2000 and ordered as follows:

THIS COURT CONFIRMS the Order of Master Bolton made May 9, 2000, that the Appointment filed by the Client on March 29, 2000 is amended to include an Appointment for the Examination of the Fee Settlement Agreement between the Solicitor and the Client dated May 18, 1999, said amendment to be effective May 9, 2000.

THIS COURT DECLARES that the Solicitor/Client relationship between Baumgartel Gould and the Client was terminated as of January 17, 2000.

[14] The Client appealed Master Bolton's November 8, 2000 order. On January 31, 2001, Boyd, J. allowed the appeal such that the amendment of the appointment was effective the date it was first filed thus bringing it within the time limit allowed for a review by a registrar pursuant to the provisions of the Legal Profession Act.

[15] As a result of Boyd, J.'s order, the parties appeared before me on May 23, 2001 for an examination of the Settlement Agreement and a review of the two accounts rendered by the Solicitors to the Client pursuant to the new retainer agreement entered into on May 18, 1999.

[16] The Client seeks cancellation of the Settlement Agreement pursuant to the provisions of s. 68 of the Legal Profession Act, (1998) c. 9, which provides as follows:

- (1) This section does not apply to agreements entered into before June 1, 1998.
- (2) A person who has entered into an agreement with a lawyer may apply to the registrar to have the agreement examined.
- (3) An application under subsection (2) may only be made within 3 months after
 - (a) the agreement was made, or
 - (b) the termination of the solicitor client relationship.
- (4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.
- (5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.

- (6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.
- (7) If an agreement is cancelled under subsection (6), a registrar
 - (a) may require the lawyer to prepare a bill for review, and
 - (b) must review the fees, charges and disbursements for the services provided as though there were no agreement.
- (8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.
- (9) The procedure under the Rules of Court for the assessment of costs, review of bills and examination of agreements applies to the examination of an agreement.
- [17] The parties agreed that I must first decide whether the Settlement Agreement was unfair or unreasonable, having regard to s.68 of the Legal Profession Act and, if so, I must review all of the accounts rendered by the Solicitors and which were the subject of the Settlement Agreement. If I determine that the Settlement Agreement was not unfair or unreasonable, I must review only the two accounts rendered by the Solicitors after the Settlement Agreement was entered into.
- [18] This case is unique. It deals with a fee settlement agreement. In the usual course, s.68 of the Legal Profession Act is used to review contingency fee agreements, not agreements entered into between a solicitor and client to settle a dispute related to fees. There is no bar, however, to using that section to review an agreement such as the Settlement Agreement entered into in this case. In *Doig v. Davidson Muir*, [1998] B.C.J. No. 723 (Q.L.) (C.A.), Southin, J.A., in reviewing the historical basis for certain provisions of the Legal Profession Act states, at paras. 15 - 19:
 - [15] Over the last 15 or 20 years, the practice appears to have grown of solicitors entering into fee agreements with their clients instead of leaving the question of quantum, if the client is unhappy with the amount charged, to be resolved within the principles enunciated in *Yule v. City of Saskatoon* (No. 4) (1955), 16 W.W.R. 305 (Sask. Q.B.) [affirmed 17 W.W.R.296, 1 D.L.R. (2d) 420 (Sask. C.A.)],.
 - [16] Such an agreement is at the heart of this case.
 - [17] Although agreements concerning fees have been lawful by statute in this province since 1901 [Legal Professions Act, S.B.C. 1901, c. 4, s. 1; now Legal Profession Act, R.S.B.C.1996, c. 255, s. 87(1)] and may have been lawful at common law, they were, well within living memory, considered unbecoming, if not scandalous. Their growing prevalence in recent years led the Legislature to enact this provision [now Legal Profession Act, R.S.B.C. 1996, c. 255, s. 87]:

- (14) A person who has entered into an agreement after May 31, 1988 with a member for the payment of legal services, including a contingent fee agreement, may, within 90 days after the agreement was made or the retainer between the solicitor and client was terminated, by either party, apply to the registrar to have the agreement reviewed, even though the person has made payment to the member under the agreement, and section 78(3) applies.
- (15) On an application under subsection (14) the registrar may, if the registrar considers that the contract is unfair or unreasonable under the circumstances existing at the time the contract was entered into, modify or cancel the contract, and if the registrar cancels the contract the registrar
- (a) may require the member to prepare a bill for taxation, and
 - (b) must tax the costs, fees, charges and disbursements for the services provided as though there were no agreement.
- (18) As I understand it, no application was made under this section concerning the agreement between the parties to these proceedings.
- (19) But such a contract can itself be fair and reasonable and yet the fees purportedly charged pursuant to it not be recoverable because, for instance, the hourly rate of the solicitor was such that it was unreasonable to expend the time charged or the work done was incompetently done.
- [19] In my opinion, the above clearly indicates that any type of fee agreement (not simply a contingency fee agreement) may be reviewed by a registrar pursuant to what is now s.68 of the Legal Profession Act.
- [20] The leading case on inquiries of this nature is *Commonwealth Investors Syndicate v. Laxton* (1990), 50 B.C.L.R. (2d) 186, 74 D.L.R. (4th) 260, [1991] 1 W.W.R. 315 (C.A.). The client applied under what was then s.99 of the Barristers and Solicitors Act, R.S.B.C. 1979, c. 26 to cancel a contingency fee agreement on the ground that it was not fair or reasonable. That provision reads as follows:
- 99.(1) Notwithstanding any law or usage to the contrary, a member of the society may contract, in writing, with a person as to the remuneration to be paid him for services rendered or to be rendered to the person in lieu of or in addition to the costs which are allowed to the member.
- (2) The person who has so contracted with a member of the society, or the representative of the person, may apply by motion or petition to the Supreme Court. If the court does not consider the contract fair and reasonable, it may either modify the contract or order the contract to be cancelled, and the costs, fees, charges and disbursements for the business done to be taxed in the same manner as if no contract had been made.
- [21] The court held (at pp. 198/9 (B.C.L.R.)) that:

In our opinion, s. 99 contemplates a two-step inquiry.

The first step investigates the mode of obtaining the contract and whether the client understood and appreciated its contents. The inquiry would include whether, at the time the contract was entered into, there was any lack of capacity on the part of the client, whether there was any undue influence exercised or unfair advantage taken by the solicitor, whether any mistake was made, or whether any other flaw arose in the formation of the contract which would indicate that the client did not understand and appreciate its content. The onus would be upon the solicitor to satisfy the foregoing requirements of the inquiry. Should any of those be found, the contract would not be "fair" in the sense of the statute and *Re Stuart* [[1893] 2 Q.B.201 (C.A.)]. The court would declare the contract cancelled, or would modify it, or the bill could be remitted for taxation.

The second inquiry, assuming the contract is found to be "fair" involves an investigation of the "reasonableness" of the contract. On this investigation, extending from the time of the making of the contract until its termination or completion, all of the ordinary factors which are involved in the determination of the amount a lawyer may charge a client are to be considered, and each factor may be the subject of professional evidence to assist the judge in determining the reasonableness of the fee in the particular circumstances.

[22] The court continues, at p. 202 (B.C.L.R.):

To summarise: close examination should be made of the words of *Re Stuart*. It says very distinctly that the solicitor must not only satisfy the court that (a) the agreement was fair with regards to the way it was obtained; but (b) must also satisfy the court that the terms are reasonable; and (c) the matters covered by the expression "fair" cannot be re-introduced in the "reasonable" consideration. Conversely, the matters covered by the expression "reasonable" cannot be considered in the "fairness" inquiry.

In our view the two inquiries are in nearly watertight compartments. One compartment investigates the mode of obtaining the contract and whether the client understood and appreciated its content. The second involves the reasonableness of the amount of the fee.

[23] *Commonwealth Investors Syndicate Ltd. v. Laxton*, *supra*, remains the law in British Columbia, despite the fact that that case relates to the Barristers and Solicitors Act, not the Legal Profession Act. In *Randall (c.o.b. Randall & Co.) v. Hope*, [1996] B.C.J. No. 1601 (Q.L.) (S.C.), Levine, J., in considering the applicability of *Commonwealth*, *supra* to reviews under the Legal Profession Act, held at para. 36:

In my opinion, the two-step process outlined in *Commonwealth* is still applicable to a review of a contingency fee agreement under section 78 [now s. 68] of the Legal Profession Act. The two matters on which the registrar must be satisfied are fairness and reasonableness, and the two-step inquiry clarifies the issues involved and the questions to be considered with respect to each. The only change in the legislation from the Barristers and Solicitors Act to the Legal Profession Act is with respect to the time at which the reasonableness of the agreement is to be determined. Both fairness and reasonableness are to be determined under the circumstances existing at the time the contract was entered into. This may change some of the questions asked, but not the

matters to be determined: fairness still involves the mode of obtaining the contract and whether the client understood and appreciated its content, and reasonableness still involves the amount of the fee.

- [24] Accordingly, I must first determine whether the Settlement Agreement was "fair" based on the circumstances existing at the time it was entered into. If I determine that the Settlement Agreement was "fair", I must then determine whether it is "reasonable". If I find that the Settlement Agreement was not "fair", the inquiry ends there. The Settlement Agreement will be cancelled and I must review the "fees, charges and disbursements for the services provided as though there were no agreement" (s.68(7)(b) of the Legal Profession Act).
- [25] Mr. Goodwin testified at the hearing as to the nature of the retainer and the work performed by him on behalf of the Client. The Client also testified.
- [26] The Client is 62 years old. He was born in Portugal and came to Canada in 1972. He has limited education. He understands English but does not read it. His spoken English is sufficient but he speaks with a heavy accent (as evidenced by his testimony).
- [27] The Client has been a client of the Solicitors since in or about 1988. He has used the Solicitors' services in a variety of matters including a motor vehicle accident and the matrimonial proceedings pursuant to which this matter arose. Mr. Goodwin testified that, despite the Client's difficulties with English, over time he became adept at understanding the Client. He also testified that he spent a great deal of time with the Client reviewing with him several reporting letters that he wrote to the Client about these proceedings. Many of those reporting letters formed part of the evidence in these proceedings (being attached to Mr. Goodwin's affidavit filed May 8, 2000). Those reporting letters clearly set out the Client's options in respect of the matrimonial proceedings as well as Mr. Goodwin's concern regarding the intransigent positions taken by the Client in dealing with this matter and the costs accruing to the Client as a result. Mr. Goodwin testified that the Client told him on numerous occasions that he (the Client) would rather spend all his money on legal fees than pay his ex-wife any funds.
- [28] Mr. Goodwin also testified (and the Client confirmed) that on more than one occasion during the initial retainer, the Client took his file from the Solicitors and sought a second opinion related to the matrimonial proceedings. In each instance he returned to Mr. Goodwin.
- [29] The trial of the matrimonial proceedings was heard before Boyle, J. September 14, 15, 16 and 17, 1998, January 4, 5, 6 and 7 and was concluded on March 4 and 5, 1999. The Client's testimony at the trial was given through an interpreter.
- [30] Boyle, J. issued reasons for judgment on April 28, 1999. In the end, the result was a reasonably good one for the Client. It should be noted, however, that in his reasons Boyle, J. states, at para. 55:

This case should have been dealt with on admissions and legal argument. There was very little evidentiary conflict at the end of the day.

[31] After the trial, the Client was unhappy with the result (specifically his Lordship's order that the Client pay spousal maintenance of \$400.00 per month). He also felt that his ex-wife and her solicitor had prolonged the proceedings unnecessarily and consulted Mr. Goodwin about whether or not he should claim costs of the trial. The Client was also considering an appeal of his Lordship's decision.

[32] A chambers application was made to Boyle, J. on October 8, 1999 to "wrestle to ground matters of dissatisfaction remaining to the parties at the conclusion of an eleven-day family trial" (para. 1, Boyle, J.'s Reasons for Judgment, November 18, 1999). The Client's notice of motion on that application asked that (from para. 5 of the Reasons for Judgment):

This court's maintenance order made April 28, 1999, be reconsidered and reduced retroactively and be ordered to cease when the respondent reaches 65;

The petitioner [wife] and her counsel jointly and/or severally pay to the respondent 75% of the "special costs of this proceeding or, in the alternative, increased costs".

[33] The application with respect to maintenance was successful. The application for costs was not.

[34] At the conclusion of the trial, the Solicitors began to press the Client for payment of their outstanding accounts. Throughout the matter, the Solicitors had sent regular accounts to the Client, most of which had been paid. As stated, in May 1999 the sum of \$16,464.04 was due and owing. The Solicitors were anxious to arrange payment, particularly as the Client wished the Solicitors to act on his behalf in respect of the further application re maintenance and costs as well as, possibly, in connection with the Client's appeal of Boyle, J.'s judgment. The Solicitors did not want to perform further work for the Client without payment of its outstanding accounts and arrangements for future retainers.

[35] The Client met with the Solicitors on May 7, 1999 to discuss the outstanding accounts. Mr. Da Sousa attended that meeting with the Client. During the meeting, the Solicitors suggested a current and running account mortgage to secure the fees. The Client was adamant that he did not want to provide such security. He felt that such request was unfair. He testified that he just wanted the matter dealt with and the fees settled. During that meeting, the Client offered to pay the sum of \$10,000.00 to the Solicitors to settle the accounts. The Solicitors refused.

[36] After the May 7, 1999 meeting, the Client had telephone discussions with Mr. Goodwin about settlement of the accounts. The Solicitors offered to accept \$13,500.00 in full and final satisfaction of the accounts. The Client again offered \$10,000.00. The meeting on May 18, 1999 was for the purpose of resolving the matter of the outstanding accounts.

- [37] During the meeting of May 18, 1999, the Client offered to pay \$12,000.00 to settle the accounts. The Solicitors accepted. The Solicitors then produced the Settlement Agreement and the Client signed it in the Solicitors' office that day.
- [38] Mr. Goodwin testified that he reviewed the terms of the Settlement Agreement with the Client. Mr. Goodwin also testified that his practice with the Client, over 10 years of representing him, was to read letters to the Client and explain them to him. Mr. Goodwin noted that there had never been a need for an interpreter in any of the meetings with the Client. He had become familiar with the Client's speech patterns and had no difficulty understanding the Client or making himself understood, despite the Client's difficulties with spoken English.
- [39] The Client acknowledged when testifying that he signed the Settlement Agreement. He also acknowledged (on cross-examination) that he had had numerous meetings with Mr. Goodwin during the time Mr. Goodwin acted for him. He further acknowledged that Mr. Goodwin also often spoke to him by telephone to review and discuss his case. The Client also testified that he simply wanted a final resolution of the accounts during the May 18, 1999 meeting. He agreed during cross-examination that he felt that the \$12,000.00 agreed to was fair but he stated that he was anxious to apply to court to deal with the issues of maintenance and costs, as well as to deal with a possible appeal of Boyle, J.'s order. He testified that he recalled Mr. Goodwin reading the Settlement Agreement to him but he could not specifically recall any discussions related to the fact that the Settlement Agreement removed the Client's right to have his accounts reviewed by a registrar of the court.
- [40] Mr. Goodwin testified that he advised the Client that he could take the Settlement Agreement to another lawyer for review. The Client could not specifically recall those discussions but acknowledged that he had, in the past, taken his file to other lawyers for review and a second opinion, both as to the Solicitors' conduct of the matter and the fees charged. The Client made it clear that he simply wanted the matter resolved and that he was not interested in seeking independent legal advice related to the Settlement Agreement.
- [41] It is clear from the evidence adduced at the hearing that, at the time the Settlement Agreement was entered into, there was no lack of capacity on the part of the Client. Mr. Azevedo, on behalf of the Client argued that the Client's unsophisticated nature and lack of capacity in the English language showed a lack of capacity. I do not agree. It was clear from the evidence that the Client had used lawyers in the past (in fact he sought second opinions related to the proceedings) and understood the nature of the legal retainer. Secondly, although he lacked the capacity to read English, he has been in Canada for 30 years. He clearly understands English well. He sat through the proceedings before me without an interpreter and appeared to understand the nature of these proceedings. In addition, I am convinced that Mr. Goodwin carefully explained matters to the Client on a regular basis and took instructions from the Client on the basis of those explanations.

- [42] I have also determined that there was no undue influence exercised or unfair advantage taken by the Solicitors in entering into the Settlement Agreement. Mr. Azevedo argued that the Client was pressured to sign the Settlement Agreement because he wanted the chambers' application to be made and the time limit for filing an appeal was fast approaching (30 days from April 28, 1999). I do not agree. It was clear that the Client wanted the chambers' application brought as soon as possible. However, the Client was well aware that a solicitor other than the Solicitors could have brought the application - he did not need to retain the Solicitors to do so (although it was likely in his best interests, the Solicitors being intimately familiar with the case). There was, however, no time limit with respect to that application. With respect to the appeal, all that was required was the filing of a notice of appeal; a relatively simple document to prepare and which would not have attracted large fees.
- [43] In my opinion, no mistake was made in the formation of the Settlement Agreement. Both the Client and the Solicitors clearly wanted the matter dealt with. They understood that the nature of the Settlement Agreement was to settle the outstanding accounts owed by the Client to the Solicitors. Mr. Azevedo argued that because one amount for an account allegedly rendered January 22, 1998 (in the amount of \$41.58) was inadvertently included on the list of accounts in the recitals to the Settlement Agreement, I should find a mistake and set it aside. I do not agree. That "mistake", if any, was insufficient to set aside the Settlement Agreement.
- [44] Finally, I must determine whether any other flaw arose in the formation of the contract which would indicate that the Client did not understand and appreciate its content. It is with respect to this latter item that I have the greatest difficulty. It is clearly the responsibility of the Solicitors to satisfy me in respect of this inquiry. In my opinion, it was not clear from the evidence adduced at the hearing that the Client understood that by signing the Settlement Agreement he was giving up his right to have the accounts reviewed by a registrar of the court. In my opinion, a clause in an agreement which purports to oust the jurisdiction of the court must be clearly understood by both parties to the contract. It was up to the Solicitors to convince me that the Client clearly understood the right of review that he was giving up by entering into the Settlement Agreement. I was not convinced. In making this determination, I am mindful of the evidence given by Mr. Goodwin that he reviewed the Settlement Agreement and each of its provision with the Client. I am sure that he did so. I am not, however, sure that the Client fully understood the nature of a review pursuant to the provisions of the Legal Profession Act.
- [45] The original retainer agreement entered into on March 25, 1996 contained the following provision:

5. REVIEW BY COURT

You should be aware that Part 12, Rule 1060(b) of the Law Society Rules states that "the person who entered into the agreement with the member may, within 90 days after the agreement was made or the retainer between the solicitor and client was terminated, by either party, apply to a district registrar of the Supreme Court of British Columbia to have the agreement reviewed, notwithstanding that the person has made payment to the member under the agreement.

- [46] The new retainer agreement entered into on May 18, 1999 contained the same provision (although numbered "6" rather than "5". The Solicitors intimated that those provisions should be some evidence of the Client's knowledge of the review process. I do not agree. Firstly, with respect to the first retainer agreement, it was signed in 1996. I must base my review of the Settlement Agreement on the circumstances existing at the time that Settlement Agreement was entered into. Secondly, the language in the retainer letter is difficult and confusing. Even had Mr. Goodwin explained this retainer letter to the Client (and I have no doubt that he did), there is no compelling evidence before me to the end that the Client fully understood the nature of the review and that signing the Settlement Agreement would bar him from bringing an application for such review.
- [47] On this basis, I find that the Settlement Agreement was not fair and should be cancelled. I do not, therefore, have to consider whether the fees were "reasonable", although I heard evidence from Mr. Goodwin on this point.
- [48] The parties should set down before me, at the earliest opportunity, the matter of review of the fees, charges and disbursements charged for the services rendered, as well as the review of the two latter accounts rendered under the new retainer agreement. I leave it to counsel to determine the appropriate amount of time required, however, note that Mr. Goodwin has likely provided the bulk of his evidence. I expect that one additional day will be necessary.
- [49] The matter of costs with respect to this review may be dealt with at the further application for review.

"District Registrar K. Sainty"

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