
CANADA / JUDGMENT

Ben Ingram Law Corporation v. Xu

2020 BCSC 1912

COURT

Supreme Court of British Columbia

DECIDED

4 December 2020

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2020 BCSC 1912 Ben Ingram Law Corporation v. Xu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ben Ingram Law Corporation v. Xu,

2020 BCSC 1912

Date: 20201204

Docket: S207006

Registry: Vancouver

Between:

Ben Ingram Law Corporation

Solicitor

And

Wan Cheng Xu aka Wancheng Xu aka Victor Xu

Client

Before: Master Muir

(As Registrar)

Reasons for Decision

Counsel for the Solicitor:

B.J. Ingram

Counsel for the Client:

T. Bhullar

Place and Dates of Hearing:

Vancouver, B.C.

November 2-3, 2020

Place and Date of Decision:

Vancouver, B.C.

December 4, 2020

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Introduction

- [1] This is a review of the accounts of the solicitor, Ben Ingram Law Corporation represented by Ben Ingram ("Mr. Ingram"), rendered to the client, Wan Cheng Xu aka Wancheng Xu aka Victor Xu ("Mr. Xu").
- [2] Mr. Xu retained Mr. Ingram to represent him in a family litigation matter (Vancouver Registry Action E152859) (the "family litigation") from August 2017 to February 2020. The litigation involved many applications, a five-day trial from November 5 to 9, 2018, an appeal, and costs arguments. The accounts rendered totalled \$149,504.13 inclusive of taxes, less a credit of \$1,000 recovered in costs from Mr. Xu's former spouse, Ms. Chu, for a total of \$148,504.13.
- [3] Section 71 of the Legal Profession Act, S.B.C. 1998, c. 9 [LPA] is the legislative framework for such reviews which provides:

Matters to be considered by the registrar on a review

71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).

- (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.
- [4] A registrar's pre-hearing conference for this review was held on September 2, 2020 and Master Vos required Mr. Xu to render particulars of his concerns with the solicitor's accounts by September 30, 2020. Mr. Xu's responses are contained in a letter of September 30, 2020 from his counsel and will be dealt with below.

Mr. Xu's position

- [5] Mr. Xu argues that he should not be bound by the particulars set out in counsel's letter of September 30, 2020. He asserts that was written before counsel knew that there was no signed fee agreement between him and Mr. Ingram.
- [6] Mr. Xu submits that there was no written contract between him and Mr. Ingram and that there was no discussion of the hourly rates that would be charged. Hence, Mr. Xu argues that there was no meeting of the minds as to the amounts Mr. Ingram would be charging him.
- [7] Mr. Xu signed the certificate of fees for the first three accounts of September 28, 2017, November 3, 2017 and November 7, 2018 (the "three accounts") without obtaining independent legal advice and Mr. Ingram never advised Mr. Xu to obtain independent legal advice before signing the certificate of fees.
- [8] The relationship between Mr. Xu and Mr. Ingram is based on the utmost good faith. There was a duty to advise the client fully about the terms of the retainer, which was breached by Mr. Ingram.
- [9] As to the appeal, Mr. Xu points out that the cross-appeal was abandoned without Mr. Xu's consent. As a result, he argues that much of the value of the appeal work done was lost to him.
- [10] Thus, Mr. Xu argues that all charges, other than those that were conceded to be deducted, should be reduced by 30% and the court of appeal charges should be reduced by 50%.

Retainer

Whether a retainer agreement was in place

- [11] An early issue that arose in this review hearing was whether there was a retainer agreement. There is no written retainer agreement signed by the lawyer (or his agent) and Mr. Xu.
- [12] Evidence brought in this hearing established the engagement of Mr. Ingram by Mr. Xu in the family litigation as follows.
- [13] On August 24, 2017, Mr. Xu had a preliminary meeting with Mr. Ingram.
- [14] On August 28, 2017, Mr. Xu apparently called Deidre McCarville, a staff member of Mr. Ingram's office, and indicated that he wanted to retain Mr. Ingram and that he had received a notice of application from Ms. Chu returnable September 1, 2017.
- [15] On August 29, 2017, Mr. Xu filled out a client information sheet and Ms. McCarville gave him a document entitled "Cost Control" on how to minimize legal fees in family litigation, as well as another document entitled "Fee Information". The Fee Information sheet:
- sets out Mr. Ingram's hourly rate (being \$375 per hour) and lesser amounts for associates and legal assistants;
 - points out that legal work, other than court appearances and strategic analysis, will be delegated to the most cost-effective person;
 - describes disbursements, retainer payments required, payment of accounts; and
 - indicates that billing will be monthly.
- [16] On the same day, August 29, 2017, Ms. McCarville emailed Mr. Ingram to confirm a meeting for him and Mr. Xu for Wednesday, which would have been the following day, August 30, 2017.
- [17] On August 31, 2017, Mr. Ingram wrote to Ms. Chu advising that he had been retained by Mr. Xu and asked her for a short adjournment of her application set for the following day, September 1, 2017.
- [18] Based on the foregoing, Mr. Ingram asserts that the contract of retainer was formed from the Fee Information sheet having been provided to Mr. Xu and Mr. Xu then meeting with Mr. Ingram and asking Mr. Ingram to represent him in the upcoming hearing set down by Ms. Chu and generally. Mr. Ingram asserts that the agreement was for necessary work to be done in accordance with the hourly rates provided.
- [19] Mr. Xu acknowledged, through Mr. Bhullar, counsel at this review hearing, that he received the Fee Information sheet, but says that fees and hourly rates were never discussed. Mr. Xu says he retained Mr. Ingram pursuant to an oral agreement, but he did not agree to Mr. Ingram's hourly rate or those of his associates and legal assistants. Mr. Xu does not indicate, however, on what basis he understood he was retaining Mr. Ingram if not at an hourly rate.

Discussion

- [20] The lawyer has the burden of proving a retainer agreement and, absent documentation and where credibility is even, the client's evidence will be accepted over the lawyer's evidence.
- [21] Here, there is documentary evidence that supports the lawyer's evidence, in the Fee Information sheet that Mr. Xu acknowledges receiving.
- [22] There are some issues with Mr. Xu's credibility.
- [23] In his affidavit #3 sworn October 26, 2020 and filed October 28, 2020 under the previous LPA review matter (Vancouver Registry Action S1812237), Mr. Xu asserts that on November 6, 2018, the second day of trial, he was presented with a "certificate of fees" and that Mr. Ingram demanded he sign it or Mr. Ingram would withdraw as his counsel and would adjourn the trial.
- [24] Mr. Ingram did not deny that a certificate of fees was signed, but denies he threatened to adjourn the trial. Mr. Ingram brings documentary evidence that the certificate of fees was not even drafted until several days after Mr. Xu deposes it was presented to him.
- [25] In addition, Mr. Xu swears that he was not given notice of the November 19, 2018 registrar's hearing to have the certificate of fees reviewed. Again, however, there is clear documentary evidence that Mr. Xu was notified of the hearing and that he said he understood.
- [26] In the circumstances, I am satisfied that Mr. Xu retained Mr. Ingram on the basis of the hourly rates payable for work done by Mr. Ingram and his staff at the time the Fee Information sheet was provided. That, of course, according to s. 71(5) of the LPA, does not restrict my review of the lawyer's fees. It is but one factor to be considered under s. 71(4) of the LPA.
- [27] I note that at some point during his retainer, Mr. Ingram raised his hourly rate from \$375 to \$420 per hour. He conceded that Mr. Xu did not agree to the increased amount and that his account should be reduced accordingly.
- [28] I note that no accounts were provided to Mr. Xu until the time of the trial in November 2018, and that Mr. Xu has not paid anything for the legal services of Mr. Ingram and his office to date.

The Legal Proceeding

- [29] Mr. Ingram prepared a week-by-week breakdown of his representation of Mr. Xu. He was thorough and organized.
- [30] His evidence was that Ms. Chu was frequently self-represented, but did have counsel for the trial and different counsel for her appeal. Mr. Ingram described Ms. Chu as dogged and persistent.

- [31] An issue of concern to Mr. Xu was the parties' child. Ms. Chu was seeking sole custody of their child. Her "theme", according to Mr. Ingram, was that Mr. Xu did not take proper care of the parties' child, that there was a history of abuse, that he had an affair and stole money and business from her, and that she was resentful and disparaging of Mr. Xu's new relationship.
- [32] Apparently, Ms. Chu and Mr. Xu had been in business importing and selling furniture from China. She argued that Mr. Xu and his new partner had used their new company, Future Furniture Ltd., to misappropriate that business.
- [33] Mr. Ingram said that Mr. Xu was demoralized by the confrontation with Ms. Chu and that Mr. Ingram had to act as a buffer to protect Mr. Xu. He said Mr. Xu was depressed by the litigation and other matters and was run roughshod over by Ms. Chu.
- [34] As noted above, when the retainer began the family litigation was in progress. A trial had been scheduled for February 2018.
- [35] Ms. Chu was living in the parties' former family home. Prior to Mr. Ingram's retainer, Ms. Chu had obtained an order to allow her to use \$800,000 of family funds to pay down the mortgage on the family home.
- [36] Mr. Xu attended court in the morning that application was heard, but left at lunch, apparently not understanding that the matter was still to be heard. Ms. Chu made her application in the afternoon and Justice Myers made the order sought.
- [37] This was troubling to Mr. Xu. He felt there had been a mix-up, and Mr. Ingram's early work was to try to get back before Myers J. to have the matter re-opened. Mr. Ingram also filed a notice of appeal.
- [38] Ultimately, Myers J. refused to reconsider his order and the appeal was abandoned.
- [39] In September and October 2017, Mr. Ingram was dealing with the application that Ms. Chu had originally set for September 1, 2017. Mr. Ingram appeared and obtained an order adjourning the application to September 12, 2017.
- [40] Ms. Chu's application was extensive and included seeking to have Mr. Xu's new partner and his company added as parties to the litigation. She was also seeking repayment of \$250,000 and various other amounts that he had allegedly taken from family assets.
- [41] On September 12, 2017, Ms. Chu's application was before Master Taylor and he made certain orders about discoveries and a trial management conference, but he adjourned the bulk of her application to the trial.
- [42] Ms. Chu then brought another application dated September 22, 2017, again seeking orders for repayment of funds and seeking interim spousal and child support of \$5,000 per month.

- [43] Mr. Ingram, for Mr. Xu, brought an application to sell the former family home and for an interim distribution of family assets. He also sought an order that Ms. Chu's affidavit filed September 22, 2017 be struck and that parts of her notice of application be struck as they had been already decided by Master Taylor.
- [44] Ms. Chu's applications came before Madam Justice Gropper on October 6, 2017. Justice Gropper added Mr. Xu's partner and company as parties to the family litigation, but struck out Ms. Chu's affidavit of September 22, 2017, dismissed much of the application of September 22, 2017, and ordered that Ms. Chu could not bring any further applications without leave of the court.
- [45] Master Baker heard Mr. Xu's application on October 19, 2017. He ordered another affidavit of Ms. Chu's to be struck in its entirety and gave her time to file a proper affidavit in response, adjourning the substance of the application to November 2, 2017. Ultimately, the November 2, 2017 application was adjourned generally.
- [46] Documents and discoveries were done in the normal course, and trial preparation was commenced.
- [47] Ms. Chu then retained counsel and her counsel made an application to seek leave to bring an application to adjourn the trial scheduled for February 2018. When the application was heard, the trial was adjourned to the earliest possible mutually convenient dates, peremptory on Ms. Chu. Eventually, the trial was rescheduled for November 2018.
- [48] I detail the above, not to delve into every issue that the parties dealt with in the course of the litigation, but rather to exemplify Ms. Chu's persistence and Mr. Ingram's relative success in dealing with her in the courts.
- [49] As Mr. Ingram was not billing monthly and not insisting on payment from Mr. Xu, he was running into his own line of credit. At about the time of the first trial dates, Mr. Xu inquired about a pre-bill and wanted to work out a payment plan and Mr. Ingram discussed with Mr. Xu getting security for his fees in the form of a mortgage on Mr. Xu's condominium.
- [50] Ultimately, that was not done, instead, as noted above, at the time of the trial in November 2018, Mr. Xu signed a certificate of fees, which after review by Registrar Cameron (as he then was) on November 19, 2018 was registered against title to Mr. Xu's condominium.
- [51] The certificate of fees was based on the first three accounts. The total of the three accounts was \$84,916.66. This was reduced by \$1,000 in costs that Ms. Chu had paid and Mr. Ingram reduced the amount of his accounts by giving Mr. Xu a discount of \$7,000. The fees were certified at \$76,916.66.
- [52] Despite that certificate of fees, Mr. Ingram is not suggesting that these accounts cannot be reviewed. He volunteered that they should be part of the overall fee assessment.

- [53] Looking at the trial results, Mr. Ingram testified that although there were some disappointments, on balance, he considered Mr. Xu had been relatively successful.
- [54] The trial judge, Justice Milman, in his December 14, 2018 reasons for judgment (the "trial judgment") did grant an order that the parties were joint guardians of their child, and for parenting to be shared. That was a positive outcome for Mr. Xu and not a foregone conclusion given Ms. Chu's arguments.
- [55] Mr. Xu was granted formal parenting time and he was granted permission to take the child to China during the summer for one month. Another positive outcome for Mr. Xu.
- [56] Under the trial judgment, he was also to receive compensation from Ms. Chu of \$374,824.73 due to her having kept the former family home. That was a negative outcome for him because it was based on a reapportionment to Ms. Chu of 60% of the family assets, partially in recognition of Mr. Xu's taking of the family business.
- [57] The compensation payment also included some modest lump sum spousal support and modest retroactive child support.
- [58] Guideline income for both parties was a challenge as the business they had run together was largely cash and that continued after separation.
- [59] Ms. Chu was arguing that the judge should impute income to Mr. Xu of \$180,000 per annum. Mr. Ingram argued the judge should find Mr. Xu's income to be \$30,000 per annum. Ultimately, the judge imputed income of \$60,000 per annum to Mr. Xu. Another positive result.
- [60] An additional positive result stemmed from Mr. Xu having used family asset money to buy himself a new condominium after separation. The money he used was considered in the apportionment of assets, but the increase in value of his condominium was not.
- [61] Mr. Xu was very distressed by the award to Ms. Chu of 60% of the family assets, but otherwise said he was happy with the result.
- [62] They discussed an appeal and Mr. Ingram considered things and ultimately advised that there was about a 15% chance of succeeding on an appeal of the reapportionment.
- [63] Mr. Xu did not instruct an appeal to be brought and Ms. Chu did not appeal the result within the 30 days allowed.
- [64] Ms. Chu applied for costs, which led to a formal application. That was heard on April 5, 2019. Mr. Ingram argued that the parties should bear their own costs and that was the result. That is significant, as Milman J. apparently considered that neither party had been substantially successful at the trial.

- [65] In the meantime, Mr. Ingram was working on trying to collect the payment ordered from Ms. Chu. He applied to settle the order and then had it registered on title to the former family home.
- [66] Mr. Ingram then brought an application to have the property sold under the provisions of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78. Mr. Ingram attended court to argue that application on April 30, 2019. That application was adjourned by Master Taylor to May 30, 2019 before Justice Affleck, which was further adjourned to May 31, 2019 before Milman J.
- [67] Almost immediately thereafter, Ms. Chu sought and obtained leave from our Court of Appeal to extend time to file an appeal from the trial judgment. She then brought an application on June 3, 2019 in the Supreme Court to stay execution of the trial judgment.
- [68] When Ms. Chu's appeal was commenced, Mr. Ingram drafted a Notice of Cross Appeal to contest the 60/40 reapportionment of family assets. He did so out of an abundance of caution, not because he felt any differently about the merits of that appeal. He wanted to preserve the opportunity to bring a cross-appeal.
- [69] That would allow Mr. Ingram to reconsider his opinion about the potential success of an appeal on that issue in light of whatever Ms. Chu submitted in her factum.
- [70] Ultimately, when it came time to prepare and file the respondent's factum, Mr. Ingram abandoned the cross-appeal. He did not want to press it, as he believed the chance of success was minimal and he wanted the court to have every reason to have confidence in the decision of the trial judge.
- [71] Mr. Ingram did not obtain specific instructions from Mr. Xu to abandon the cross-appeal. Mr. Xu did see the factum and did not question or raise the issue of the cross-appeal.
- [72] On appeal, Ms. Chu was seeking to have income imputed to Mr. Xu of \$180,000, and for a significant increase in lump sum spousal support. The spousal support calculations she was relying on suggested lump sum spousal support of over \$250,000.
- [73] Ms. Chu had minimal success on these issues. The court of appeal increased Mr. Xu's imputed income from \$60,000 to \$67,200 per annum and increased lump sum spousal support from \$25,000 to \$41,000.
- [74] Ms. Chu also argued that she should be entitled to share in the increased value of Mr. Xu's condominium, based on his use of family assets for the purchase.
- [75] Ms. Chu was successful on that issue but the court awarded 50% of the increase, not 60%. She received an additional \$125,000.
- [76] The appeal was heard on November 6, 2019, reasons were handed down on November 14, 2019.

- [77] After argument on costs, the Court of Appeal ordered each party to bear their own costs. Again, an indication that the court did not view either side as being substantially successful.
- [78] I note, that was other than with respect to an application that was necessary to the settle the Appeal Books--the registrar granted Mr. Xu the costs of that application.
- [79] Mr. Ingram again began to focus on recovering the judgment for Mr. Xu and reset the hearing for sale of the former family home for December 19, 2019. He was also concerned to have the Certificate of Pending Litigation ("CPL") removed from title to Mr. Xu's condominium.
- [80] Ms. Chu then brought another application filed December 17, 2019, seeking:
- a) The CPL be maintained on Mr. Xu's property as security for child support until after the child had graduated from university;
 - b) The asset restraining order on Mr. Xu's bank accounts be maintained and the balance held "for further judgment";
 - c) Mr. Xu to pay lump sum child support from December 2019 to December 2027 in the amount of \$61,152 or greater depending on his income;
 - d) Mr. Xu to pay lump sum s. 7 special expenses for the child from December 2018 to December 2027 in the amount of \$127,980 or more depending on new judgment;
 - e) Ms. Chu could hold "the full balance fund after new judgement" for child's education;
 - f) Ms. Chu could pick up the original marriage certificate from the court;
 - g) A declaration that Ms. Chu is the sole owner of the former family home and an order that the CPL be removed from title. That Ms. Chu could apply for a new mortgage and that, what I assume to be the amount she owes Mr. Xu after the court of appeal judgment, should be held by a bank pending her costs claim and further court judgment;
 - h) A re-evaluation of Mr. Xu's income and an order that he must provide Future Furniture Ltd.'s original purchase invoices from customs and all sales receipts and related business documents from May 2016 to present. For a court certified accountant to finalize the financial statements. Costs to be paid by Mr. Xu;
 - i) An order that Canadian Border Security Agency provide the Future Furniture Ltd. invoices directly to Ms. Chu;
 - j) Ms. Chu be allowed to find new evidence for Mr. Xu's income to be imputed at a minimum of \$180,000 per annum, that Mr. Xu be imputed capital gain income of \$147,842 on March 1, 2016 for child and spousal support;
 - k) Mr. Xu to pay \$13,050 for an English assessment and tuition for the child;

- l) Ms. Chu have liberty to claim full legal fees of \$180,000 or more since the family claim was filed;
 - m) An order that Mr. Xu's partner had illegally worked in Canada from 2015 to 2017 and a declaration that she is inadmissible to Canada;
 - n) Mr. Xu pay a fine for not following court orders
 - o) Costs payable forthwith.
- [81] Mr. Ingram spent six hours preparing responding materials and preparing for Ms. Chu's December 17, 2019 application. When cross-examined on the amount of time spent, Mr. Ingram testified that this was an exceptional application, unique in his experience. Ms. Chu was seeking wide-ranging orders and remedies that would have gutted Mr. Xu's award on appeal. He said he had no doubt that this application was a real blow to Mr. Xu, and was yet another example of the doggedness of Ms. Chu.
- [82] Justice Hori heard that application on January 16, 2020, and other than ordering the marriage certificate returned to her, he dismissed the rest of Ms. Chu's application and ordered her to take requisite steps to remove the CPL from title to Mr. Xu's condominium.
- [83] Mr. Xu terminated Mr. Ingram's retainer in February 2020. Mr. Ingram was surprised, as he felt that they had a good relationship and that things were proceeding relatively well against Ms. Chu. Mr. Ingram speculated that the issue of the 60/40 split of family assets had festered with Mr. Xu and he was perhaps disappointed that Mr. Ingram had not taken an appeal or cross-appeal on that decision.

The Factors to be Considered

The complexity, difficulty or novelty of the issues involved

- [84] Mr. Ingram submitted that this was perhaps a slightly above average file in terms of difficulty. The issues themselves were not unique, but they were compounded by the approach of Ms. Chu and the fact that she was often unrepresented.

The skill, specialized knowledge and responsibility required of the lawyer

- [85] Mr. Ingram displayed considerable skill in dealing with Ms. Chu and acting as a buffer between her and Mr. Xu. He systematically dealt with her demands and applications--to the point of obtaining Gropper J.'s October 6, 2017 order that Ms. Chu could not bring further applications without leave of the court.
- [86] Mr. Ingram has considerable knowledge and experience in family law and, in my view, that was well evidenced by the results obtained, both along the way and at trial and appeal.

The lawyer's character and standing in the profession

- [87] Mr. Ingram's good character and standing in the profession were not challenged.

The amount involved

[88] The claims made by Ms. Chu were significant, custody was in issue and there were significant assets in dispute and substantial child and spousal support claims. Had the result gone differently, Mr. Xu could have walked away with nothing.

The time reasonably spent

[89] I have the pre-bills showing all of the time spent by Mr. Ingram, other counsel and legal assistants. There were some concerns expressed by Mr. Xu with time recorded on this matter in the particulars contained in his counsel's letter of September 30, 2020. For the first three accounts, his concerns were:

Time Entries

Mr. Xu's Concerns

a) January 10, 2018: Tanya San Martin, 3.5 hours, \$525 plus \$63 tax

Argued to be excessive considering the matters set out in the pre-bill.

b) January 26 and 29, 2018: Tanya San Martin, 4.1 hours, \$665 plus \$80 tax

Similarly argued to be excessive.

c) February 2, 2018: Ben Ingram, 4.1 hours, \$1,537.50 plus \$184.50 tax

This was for attendance at a court application and Mr. Xu disputes that the application took 4.1 hours. There is no evidence from him as to the time he says it did take.

d) June 30 and July 1, 2018: Ben Ingram, 5.9 hours, \$2,478 plus \$297.36 tax

Argued to be excessive for a review of newly produced documents.

e) October (undated) and October 24, 2018: Stefanie Wong, blank time entries, 2.1 hours, \$315 plus \$37.80 tax

Cannot be substantiated as there is no record of what was done.

[90] The total amount objected to is, \$6,183.16 inclusive of taxes.

[91] Mr. Ingram stands by his time records and has no reason to believe that his staff are anything other than diligent in recording their time.

[92] Mr. Ingram records his time daily as he does the work. He uses a program designed for timekeeping. His evidence was that he does not "muck around" with time recording, that he keeps track daily and uses .1 increments of time and that if he put down 4.1 hours he is confident that that is the time it took.

[93] He points out, however, that for the first three accounts he has already given Mr. Xu a discount of \$7,000 and he does not resile from that. He submits that that is sufficient to cover the concerns raised.

[94] As to the account dated February 14, 2020, Mr. Xu raised the following objections:

Time Entries

Mr. Ingram's Response/

Mr. Xu's Concerns

a) November 5 and 6, 2018: Stefanie Wong, note taking at trial. 6 hours. \$900 plus \$108 tax

Mr. Ingram could not produce the notes that Ms. Wong took at the trial and as a result felt he could not prove the importance of this work. He concedes that this charge should be deducted.

b) April 4, 2019: Greta Carew-Johns, convert written submissions on costs. .7 hour, \$70 plus 8.40 tax

Mr. Ingram could not explain what this time was for and conceded it should be deducted.

c) May 29, 2019: Ben Ingram and Greta Carew-Jones, drafting notice of cross-appeal. 1.2 hours, \$396 plus \$47.52 tax

Mr. Xu argued that this charge should be deducted as he did not specifically instruct the notice of cross-appeal to be drafted, and in any event, the cross-appeal was not proceeded with. Mr. Ingram does not accept this criticism. He argues that while drafting the notice of cross appeal may not have been necessary, it was a reasonable step to take in the circumstances. I will deal with this and other appeal issues later in these reasons

d) July 19 and 21, 2019: Ben Ingram, consider appeal issues; consider removal of Certificate of Pending Litigation, consider appeal and cross-appeal issues. 2.9 hours, \$1,218 plus 146.16 tax

Mr. Ingram calculated this at only 1.8 hours, but there is another time entry for the same matter. Mr. Xu argues this time is excessive. He points out that there is nothing produced from this consideration and he questions the need for this time.

e)

Mr. Xu objects to all charges for time associated with the appeal and wants them reduced by 50%. He argues that the failure to bring a cross-appeal was detrimental to him and as a result he lost much of the value that the appeal might have had for him.

f) December 30, 2019, January 9, 2020: Ben Ingram, preparing application response to Ms. Chu's December 17, 2019 notice of application. 6.9 hours, \$2,918 plus \$350.16 tax

Mr. Xu argues the time spent is excessive. Mr. Ingram disputes this, arguing that Ms. Chu's application was essentially unprecedented and needed a carefully parsed response. I note that in his argument he only attributed 3.9 hours to this, but there was clearly time spent in addition to the one record of 3.9 hours

[95] Mr. Ingram was prepared to discount his bills by 50% of the disputed work in c), d) and f) above without conceding that the time spent was excessive. I agree that is a reasonable approach to the questioned time spent. With the additional entries, the time value was \$4,532 plus tax of \$543.84 for those entries, half of which would be \$2,266 plus \$271.92 tax. Add to that the conceded items of \$970 and tax of \$116.40 leads to a deduction of \$3,236 plus tax of \$388.32 on this account.

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.

[96] As discussed above, I have concluded that there was an agreement to pay Mr. Ingram and his associates and legal assistants at the rates set out in the Fee Information sheet provided to Mr. Xu at the outset.

[97] The rate of \$375 for Mr. Ingram, given his year of call and experience in family law, is well within the bounds of rates for similar practitioners. Likewise, those of his associates and assistants are reasonable.

[98] Mr. Ingram did concede that he should not charge Mr. Xu the increased hourly rate and he calculated that this would result in a deduction to Mr. Xu of \$7,465.50 plus \$895.86 in taxes.

The importance of the matter to the client whose bill is being reviewed

[99] I believe that it is fair to say that where there are children involved in family proceedings, the result is always extremely important to the parties. That is particularly the case here, where Ms. Chu was seeking to remove Mr. Xu from the child's life.

[100] In addition, however, there were significant financial issues here that, had they gone totally against Mr. Xu, would have had disastrous results for him.

[101] I appreciate too, the importance of having Mr. Ingram act as a buffer for Mr. Xu from the doggedness of Ms. Chu. I accept Mr. Ingram's evidence that, even with counsel, Mr. Xu was clinically depressed and incapable of standing up to Ms. Chu. The result for him without having Mr. Ingram intercede could have been very damaging.

The result obtained

[102] In many family law cases, there is not a clear winner. That is because the FLA has a presumptive 50/50 sharing of family property. It is unlikely in the extreme that one party will achieve a resounding victory in such a regime.

- [103] Nevertheless, in this case, Ms. Chu was seeking essentially that. She wanted sole custody of the child and Mr. Xu's assets tied up until the child was no longer a child of the marriage. She wanted lump sum spousal support and a division of property that would have wiped out the benefit of her receiving the former family home. In her December 2018 application, she went as far as seeking an order that Mr. Xu's new partner be determined to be an illegal immigrant and not permitted to enter Canada.
- [104] In that climate, it is safe to say that Mr. Ingram obtained a very good result. He admits there were some negatives, in particular the 60/40 family asset division.
- [105] Both the Supreme Court and the Court of Appeal ordering each party to bear their own costs is an indication that the courts did not consider that either party had been substantially successful.
- [106] Regardless, I consider that the result was a good one for Mr. Xu.

The Appeal

- [107] Mr. Xu argues that the appeal charges should be reduced by a blanket 50%. Other than the cross-appeal issue, and general arguments about the duty of a lawyer to his client, there is no specific basis for this argument. It is a completely unrealistic position in my view.
- [108] Mr. Xu complains that he did not instruct Mr. Ingram to file the cross-appeal, nor did he instruct Mr. Ingram to abandon it.
- [109] I agree that it would have been better had Mr. Ingram obtained specific instructions from Mr. Xu as to the cross-appeal. In the context, however, that Mr. Ingram had advised Mr. Xu that Mr. Ingram's opinion as to the likelihood of success on that appeal point was 15% and that Mr. Xu had decided not to pursue an original appeal, it is reasonable to conclude that his instructions on a cross-appeal would remain the same.
- [110] What then of the filing of the notice of cross-appeal itself? Obviously, it was not necessary in the sense that no cross-appeal was taken. However, in accordance with the LPA, s. 71(3)(a), fees should be allowed for services that, while unnecessary, were, "reasonably intended by the lawyer to advance the interests of the client at the time the services were provided".
- [111] Mr. Ingram's explanation of the rationale for filing the notice of cross-appeal makes sense to me. He preserved the ability to see what Ms. Chu set out in her factum and gave himself time to consider whether that changed his opinion about the chances of success and his strategic approach to the appeal.
- [112] That, in my view, brings these charges within s. 71(3)(a) and I will allow them.

[113] As to disallowing 50% of the fees for the entire appeal, that makes no sense. Ms. Chu was bringing an appeal. Mr. Xu had to defend or he could have lost everything he had achieved at trial. There was really no choice here. Thus, I do not accept Mr. Xu's position that half of the charges for the appeal should be disallowed.

Analysis and Conclusion

[114] I am satisfied that the work undertaken by Mr. Ingram was either reasonably necessary and proper in the circumstances or, as noted with respect to the cross-appeal, where not strictly necessary was reasonably undertaken with the intention of advancing Mr. Xu's interests.

[115] I do not consider that the blanket reductions argued by Mr. Xu are warranted. I am satisfied that Mr. Xu understood the basis for his retainer of Mr. Ingram. He had ample time to challenge this after Mr. Ingram provided the initial accounts and did not do so. Mr. Xu brings no evidence of what his understanding of the retainer was and I am satisfied that he knew he would be charged at the hourly rates set out in the Fee Information sheet provided to him.

[116] There was only one minor challenge to the disbursements rendered. I am satisfied that the disbursements are all reasonable and necessarily incurred for the conduct of the proceedings. Mr. Ingram's evidence is that such items as photocopying were charged at the registrar's allowable rates.

[117] The amounts conceded by Mr. Ingram or calculated by me based on Mr. Xu's specific objections to his accounts are:

- a) \$7,000 inclusive of taxes (\$6,250 plus tax) to be deducted from the first three accounts,
- b) \$970 plus tax for disputed work charges,
- c) \$2,266 plus tax for excessive time charges, and
- d) \$7,465.50 plus tax for the increase in hourly rate.

[118] Before tax, that amounts to a deduction of \$16,951.50 and with taxes a deduction of \$18,985.68.

[119] I am satisfied that the fees and disbursements advanced, after the deductions noted above, were reasonable and should be allowed.

[120] As a result, I find the solicitor's appropriate fees and disbursements, inclusive of taxes, to be \$129,518.45 (\$148,504.13 - \$18,985.68).

[121] As I have found the discount on the first three accounts to be appropriate, the certificate of fees of \$76,916.66 obtained November 19, 2018 will stand. The final account is certified at \$52,601.79 (\$129,518.45 - \$76,916.66).

[122] The solicitor will have its interest in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 79, with post-judgment interest on the November 19, 2018 certificate and pre-judgment interest on the balance from February 14, 2020 until today's date and post-judgment interest thereafter.

[123] As the accounts have been reduced by less than one-sixth, the solicitor will have its costs of this assessment.

"Master Muir"

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Prepared on 28 October 2026 · Esheria