

CANADA / JUDGMENT

Campney & Murphy v. Hollyburn Properties Ltd.

2004 BCSC 1223

COURT

Supreme Court of British Columbia

DECIDED

22 September 2004

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2004 BCSC 1223 Campney&Murphy v. Hollyburn Properties Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Re: The Legal Profession Act Citation: Campney & Murphy v. Hollyburn Properties Ltd., 2004 BCSC 1223 Date: 20040922 Docket: L033660 Registry: Vancouver Between: Campney & Murphy, a Partnership Solicitors And Hollyburn Properties Ltd. Client Before: District Registrar Sainty Reasons for Decision Counsel for Campney & Murphy: G.C. Crickmore and B. MacRae Counsel for Hollyburn Properties: A.S. Angus Date and Place of Trial/Hearing: August 30, 2004 Vancouver, B.C.

- [1] This matter came before me pursuant to an appointment by the solicitors for a review of accounts rendered by them to Hollyburn Properties Ltd. ("HPL") dated December 23, 2002 and September 16, 2003. The account of December 23, 2003 (the "First Account") is in the amount of \$18,364.45 and is made up of \$15,356.14 (fees), \$730.53 (disbursements) and \$2,277.78 (taxes). The account dated September 16, 2003 (the "Second Account") is in the amount of \$2,594.32 and is made up of \$2,080 (fees), \$198.80 (disbursements) and \$315.52 (taxes). The First Account and Second Account are collectively referred to as the "Accounts".
- [2] Reviews of solicitors' accounts are conducted under the auspices of Part 8 of the Legal Profession Act, S.B.C. 1998, c. 9. However, in order to have accounts reviewed, the solicitors must first establish that there was a retainer between them and the "person charged" with the account, as well as the terms of that retainer.
- [3] In this review, the solicitor for HPL (the corporate entity to whom the Accounts were rendered) submitted that HPL did not retain the solicitors and, therefore, had no obligation to pay the Accounts.
- [4] Accordingly, prior to undertaking a review of the Accounts, I must first determine the threshold issue of whether HPL retained the solicitors. If so, I may then undertake a review of the Accounts. If not, this matter ends and no review is appropriate, as between the parties that were before me. The Facts

- [5] In late February 2002, Mr. MacRae, the then managing partner of the solicitors, met with Mr. Stephen Sander, one of the principles of three companies: HPL, Hollyburn Properties (Alberta) Ltd. ("HPAL") and Hollyburn Commercial Properties Inc. ("HCPI") (collectively the "Hollyburn Companies").
- [6] Shortly after that meeting, Mr. Sander wrote to Mr. MacRae (Exhibit 1 - Tab 2) as follows:
THE HOLLYBURN GROUP OF COMPANIES A DIVISION OF HOLLYBURN PROPERTIES LTD./
HOLLYBURN PROPERTIES (ALBERTA) LTD. PROPERTY MANAGEMENT - RENTALS AND
INVESTMENT ANALYSTS 250 - 18TH STREET WEST VANCOUVER, B.C. CANADA V7V 3V5
TEL: (604) 926-7345 FAX: (604) 926-9717 Feb 28th 2002 R.J. MacRae Campney & Murphy
2100-1111 W. Georgia St. Vancouver BC Dear Mr. MacRae I very much enjoyed meeting you
for lunch on Monday and would like to thank you for taking the time to hear some of
Hollyburn's history. As discussed during our meeting we sent a letter to Mr. Scarlett asking
him to provide you with all the information you need. I have enclosed a copy of the letter for
your review. We would appreciate it if you could also provide us with a brief overview of the
expected time and costs involved in reviewing and making recommendations on changes to
our existing estate plan. Once again thank you for your time and consideration. Regards
Stephen Sander Stephen Sander
- [7] That letter was accompanied by a copy of a letter dated February 25, 2002 (sent on the same letterhead) signed by Mr. Sander to Mr. Scarlett (of Scarlett, Manson & Angus) (Exhibit 1 - Tab 3). That letter provides, in part: Dear Doug Please be advised that in the last shareholders meeting which was Feb 11th a few of the following issues and concerns were discussed and decided upon by all the shareholders. . . . The matter of estate planning was also discussed. It was decided that an expert should be engaged to ensure that we are as effective and efficient under the current legal and taxation laws as possible. In light of the above issues we have decided to hire some consultants which specialize in these areas. We have asked Mr. R.J. MacRae of Campney & Murphy to give us a preliminary review of the existing estate plan, which was implemented some ten years ago. Mr. MacRae is one of the experts we intend to consult before making any final decisions. Therefore we request that you assist Mr. MacRae by giving him all the information deemed necessary, minute books etc....
- [8] No formal retainer agreement was entered into. Nor did the solicitors provide Mr. Sander or any of the Hollyburn Companies with the overview of the expected time and costs involved in reviewing and making recommendations on changes to the existing estate plan (as requested in the February 28, 2002 letter).

- [9] The solicitors commenced working on matters. They collected the corporate minute books for each of HPL, HPAL and HCPL. They reviewed the minute books and prepared memoranda setting out defects in those minute books. They received a copy of Mr. Sander's will and reviewed it for deficiencies. They received and reviewed copies of various trust instruments relating to a number of trusts set up in the past to assist with estate planning issues.
- [10] A number of solicitors, as well as legal assistants, in the firm worked on the files.
- [11] Mr. Sander spoke to Mr. Hilton, Mr. MacRae and Ms Facchin (all lawyers with Campney & Murphy) on several occasions. Mr. Sander executed a codicil to his existing will on May 16, 2002. Ms Facchin reported directly to Mr. Sander by letter dated May 23, 2002 (Exhibit 1 - Tab 43) as follows: [Campney & Murphy letterhead] May 23, 2002 PERSONAL AND CONFIDENTIAL Mr. Stephen Sander ***** Queens Avenue West Vancouver... Dear Mr. Sander: Re: Codicil We confirm that, as instructed by you, we are holding in safekeeping your original Codicil dated May 16, 2002 and have registered your Codicil by filing a Wills Notice with the Division of Vital Statistics in Victoria. We enclose a copy of your executed Codicil for your records and information. Please contact us to reschedule your appointment originally set for May 21, 2002 to discuss your Will further. Thank you for allowing us to be of service to you in this matter.
- [12] Ms Facchin again wrote to Mr. Sander on June 14, 2002 (Exhibit 1 - Tab 45). That letter was sent via facsimile, addressed as follows: Personal and Confidential Mr. Stephen Sander c/o Hollyburn Properties Limited [address] Dear Mr. Sander: Re: Estate Planning Issues
- [13] That letter set out a number of matters to be addressed regarding Mr. Sander's will at a scheduled upcoming meeting with Ms Facchin.
- [14] Ms Facchin reported to Mr. Sander by letter dated August 1, 2002 (Exhibit 1 - Tab 50) by letter directed to him personally at what appears to be his home address on Queens Avenue in West Vancouver. She also prepared a memorandum directed to Stephen Sander (Exhibit 1 - Tab 51) re: "Estate Planning". In that memorandum she notes: Further to our meetings and telephone conversations, I thought it would be useful to summarize our understanding of your assets and to discuss some of the issues that arise in respect of your planning. A more detailed analysis of your estate planning objectives and options will follow as Bob Macrae works on the reorganization of the companies...
- [15] The memorandum then lays out various matters under headings: A. ASSETS AND LIABILITIES A. ESTATE PLANNING ISSUES Wills Variation Act Planning for the WVA Marriage Agreement B. PLANNING OPTIONS General Power of Attorney Representation Agreement
- [16] Ms Facchin also reviewed a number of documents on behalf of Mr. Paul and Ms Sandra Sander in respect of their personal estate planning. (See reporting letter to Mr. and Mrs. Sander from Ms Facchin dated August 1, 2002 (Exhibit 1 - Tab 52).

- [17] Mr. MacRae also spoke with Mr. Stephen Sander and his daughter, Kim Sander, at one time relating to an estate freeze for her. Details of that planning are set out in a letter dated October 15, 2002 from Mr. MacRae to Ms Kim Sander and Mr. Stephen Sander (Exhibit 1 - Tab 54). A draft trust instrument was prepared.
- [18] Mr. Rizzo (whom I believe must have been an associate at the law firm) reviewed the existing shareholders agreement for HPL and reported his considerations to Ms Facchin by memorandum dated October 30, 2002 (Exhibit 1 - Tab 59).
- [19] Stephen Sander met with Mr. MacRae on September 26, 2002 during which they discussed a number of outstanding issues. Mr. MacRae prepared a memorandum to file after that meeting which memorandum (dated November 23, 2002 but dictated shortly after the meeting) (Exhibit 1 - Tab 61) provides: I met with Stephen Sander to discuss the outstanding issues. First, he is keenly concerned that Kim's shares be frozen in favour of her children aged 12 and 3. I advised him of the 21-year realization and the requirement for a distribution out to them at that point, they will be 33 and 24 but holding shares. They could hold non-voting shares. I should write a letter setting out some of these issues to Kim including the wisdom of freezing the estate. We then discussed the three companies. The new Hollyburn Commercial company is in relatively good shape as I have been advised there was no shift in values when that reorganization was done. I am to proceed to repair the Hollyburn Properties freeze. On the Alberta company, I am to contact either Jim Miles or Peter Andrekson at Miles Davison. We discussed whether or not his ex-wife Margaret, the holder of a small percentage, would cooperate. He says that she will not and does not wish her contacted. The consequence is that, most likely it precludes us from creating additional shares. I should speak with the Alberta corporate counsel to find out how she is dealt with in any event. We discussed briefly the prospect of planning for probate fees. We discussed multiple wills and the potential use of holding companies. He advised that Silvana [Ms Facchin] has addressed some of these issues in the spousal trust which limits interest of the wife to \$100,000 per year. The issue is whether or not a trust provides \$100,000 only would qualify and on the face of it it does as she is the only one entitled to receive income out of it. As well, he wants some further form of shareholders agreement that they will sell only to each other. There is an existing Shareholders Agreement with respect to the Hollyburn Properties company. He wished to deal with the question of single ones being Mark, Emma and David. It was agreed at 2:00 p.m. on October 10th.
- [20] On December 23, 2002, Mr. MacRae sent a letter to "Hollyburn Properties Ltd., Attention: Mr. Stephen Sander" (Exhibit 1 - Tab 66) as follows: Re: Estate Planning/Corporate Reorganization As it is the end of our firm's fiscal period, I enclose our account for professional services rendered to the end of September, 2002 on the various estate planning issues. I confirm our discussion that the alterations will be made to the share capital to make the necessary adjustments we have discussed from time to time. As well, I will need to speak with your Alberta counsel to understand the scope of steps that can be taken with respect to shareholdings of your former spouse. Finally, we should finalize our review of the

proposed simplification structure which yield many benefits. We thank you for this opportunity to having been of service to you and wish you all the best in 2003.

- [21] The First Account was enclosed. It was addressed to "Hollyburn Properties Ltd., Attention: Mr. Paul Sander". That account set out the matters undertaken by the solicitors in some detail, but no designation of the time-keepers or time recorded by each of them was included on the First Account.
- [22] On June 17, 2003, Mr. Mark Hilton (he had left the firm of Campney & Murphy and joined Bernard & Partners) wrote to Mr. MacRae (Exhibit 1 - Tab 82) as follows: Re: Hollyburn Companies and Mr Stephen Sander Dear Bob, Stephen Sander has asked that I contact you concerning the attached account, [account of December 23, 2003] which may be unpaid. He adds that Gail Machon was not particularly polite about the matter of the unpaid account on the telephone. Mr Sander asks me to relay three points or questions:
1. Instead of one big block, please provide a dated account format with dates and hours and timekeepers.
 2. Please provide your planning memo summarizing your observations, advice and recommended next steps. In respect of the minute book defects, you may already have in the file another copy of a memo handy. In regard to the advice and recommendations, it may be a question of dictating a memo from your notes. We appreciate that you may be reluctant to provide a repair or planning roadmap, however, in the circumstances, such a memo should be lawyer/client privileged and that ought not be a concern.
 3. The planning memo in paragraph 2 above, Mr Sander trusts, would not attract any additional fees. Mr Sander appreciates he has certain decisions to make concerning the repair or freeze work, and that you may have already discussed your plan with John Kay. Nonetheless, it would behoove all concerned to document all of the thinking to date and the recommendations, options and choices available to Mr Sander and the companies.
- [23] No mention was made in that letter of the fact that the First Account was in the name of HPL.
- [24] Mr. Hilton again wrote to Mr. MacRae (on July 2, 2003) (Exhibit 1 - Tab 83) as follows: Re: Hollyburn Companies and Mr Stephen Sander Dear Bob, Further to my earlier fax to you on this topic, I write to follow up on two points:
1. Instead of one big block on the account, please provide a dated format with dates and hours and timekeepers.
 2. Please provide your planning memo summarizing your observations, advice and recommended next steps. In respect of the minute book defects, you may already have in the file another copy of a memo handy. In regard to the advice and recommendations, it may be a question of dictating a memo from your notes.

- [25] Again, no mention was made in that letter of the fact that the First Account was rendered in HPL's name.
- [26] A further fax was sent by Mr. Hilton to Mr. MacRae on August 1, 2003 (Exhibit 1 - Tab 84) as follows: Re: Hollyburn Companies and Mr Stephen Sander Dear Bob, Further to my earlier but unanswered faxes to you on this topic, I write again to follow up on two points:
1. Instead of one big block on the Hollyburn account, please provide a dated account format with dates and hours and timekeepers.
 2. Please provide your planning memo summarizing your observations, advice and recommended next steps. In respect of the minute book defects, you may already have in the file another copy of a memo handy. In regard to the advice and recommendations, it may be a question of dictating a memo from your notes.
- [27] As before, Mr. Hilton did not mention that the First Account was rendered to HPL.
- [28] And, again, on August 6, 2003, Mr. Hilton sent a fax to Mr. MacRae (Exhibit 1 - Tab 85) as follows: Re: Hollyburn Companies and Mr Stephen Sander Dear Bob, I have no replies from you to my numerous faxes on the topics below over the last several weeks. Further to my many unanswered faxes to you on this topic, I write again to follow up on two points:
1. Instead of one big block on the Hollyburn account, please provide a dated account format with dates and hours and timekeepers.
 2. Provide your planning memo summarizing your observations, advice and recommended next steps on the tax issues you have identified.
- [29] Once again, Mr. Hilton failed to mention any concern with the fact that that First Account was rendered to HPL, rather than Mr. Sander personally.
- [30] On September 16, 2003, Mr. MacRae sent Second Account to "Hollyburn Properties Ltd., Attention: Mr. Paul Sander".
- [31] On September 22, 2003, Mr. MacRae couriered the "summary letter" to Mr. Sander. That letter (Exhibit 1 - Tab 88) provides: Personal and Confidential Mr. Stephen Sander c/o Hollyburn Properties Limited 250-18th Street West Vancouver, BC V7V 3V5 Dear Sir: Re: Hollyburn Properties Ltd., a B.C. Company ("HPL")Hollyburn Properties (Alberta) Ltd., an Alberta Company ("HPA"), Hollyburn Commercial Properties Limited, a B.C. Company ("HCP") (collectively the Companies") I write to set out a few comments and observations with respect to your estate plan and the various companies noted above... The Law
- [32] The solicitors have the burden of proving their retainer, including the identity of the client who retained them and to whom accounts for their services might be rendered.
- [33] In *Coates v. Bucholz and Arbutus Bay Estates Ltd.* (9 September 1991), Victoria No. 903846 (B.C.S.C.), Master Halbert stated, at p. 3: The law with respect to the determination of the retainer is well settled. The onus is always on the solicitor to prove his retainer: MacGill &

Grant v. Chin Yow You, (1914) 19 B.C.R. 241 [(C.A.)]; In Re Dickie, De Beck, et al. (1916) 23 B.C.R. 538 [(C.A.)]; Griffiths v. Evans, [1953] 2 All E.R. 1364 [(C.A.)], per Lord Denning at p. 1369. Where there is a dispute as between the solicitor and his client on the terms of a retainer, the word of the client is to be accepted, or at least given more weight, unless there is some evidence to corroborate the word of the solicitor, or which tends to support the solicitor's evidence; Griffiths v. Evans; Bourne Lyall Davenport & Herbert v. Varabioff et al., Penticton Registry number 396B74, unreported, 1974, per Ruttan, J., citing with approval Macdonald v. Bellhouse, [1920] 1 W.W.R. 597 [(Alta. S.C.-T.D.)].

- [34] The dispute here is not with respect to whether the solicitors were retained, it relates to who retained the solicitors.
- [35] In Paine Edmonds v. Cady (1996), 7 C.P.C (4th) 254 (SC - Registrar), Master Tokarek, as Registrar, noted (paragraph 4, page 256): There are several legal principles to be applied in a hearing of this nature. I may not necessarily list them all, but at a minimum they include the following: Firstly, the onus is on the solicitor to establish his retainer and to establish the reasonableness of his accounts...
- [36] Mr. Angus, on behalf of HPL (who was the only party he represented at the review) submitted that HPL did not retain the solicitors. In his submissions, he directed me to much of the correspondence between the solicitors and Mr. Sanders (not HPL). On cross-examination of Mr. MacRae, Mr. MacRae admitted that the work done on these matters was for the "purpose of estate planning, review and recommendation process re Mr. Sander's estate".
- [37] In his submissions, Mr. Angus referred me to several cases. The one most relevant, in my opinion to this threshold issue is Re Salmond, Linge; Re Wenstob (1983), 44 B.C.L.R. 162 (B.C.S.C.). In that case, an issue arose as to whether a corporate entity or an individual had retained the solicitors (Salmond, Linge). At pp. 163-4, Tyrwhitt-Drake, L.J.S.C. states: [para6] In embarking on the consideration of whether Wenstob, in his dealings with the solicitors, was retaining them himself or as the voice of the company - and whether or not this makes any difference when it comes to paying their bill - I keep firmly in mind the observation of McKinnon, L.J. in Commissioners of Inland Revenue v. Cull (1938) 2 K.B. 109 at 137, where he said: In fact a company is a persona distinct from its shareholders, and they are not even quasi partners. In the attempt to grope their way through the region of make-believe thus created, various acute minds have been led into error. While I see no need in this case to pierce, lift, or otherwise violate the corporate veil - a process which his Lordship perhaps had in mind - yet the parties appeared to think otherwise. There is no veil, or other make-believe, involved here. [para7] A company of course can only act through the instrumentality of its officers, or other natural persons appointed to enter into contracts on its behalf. In my opinion, and generally speaking, for a company to be liable on a contract to pay a solicitor's bill, the solicitor must be instructed by the company, and the work he performs must be work for the company - representing it in litigation, drafting security issues, filing returns or the like - work which is for the direct benefit of the corporate persona. But where solicitors

are instructed to perform work in which the good or ill of the company is not the prime object, then those solicitors are retained not by the company but by the individual who instructs them. [para8] Here the work involved was legal work to be done in consequence of a decision of Mr. Wenstob and others to promote a partnership to raise capital for a venture in which the company was to be simply one partner - albeit a major one. The legal work was not directed primarily to the preservation or enhancement of the company or its assets; had the scheme in which the company was to participate actually come to fruition, the company would probably have received some benefit, as an investor, from the legal work, but this benefit would have been only indirectly and coincidentally the result of that work. [para9] Accordingly, in my view, the solicitors were right in looking to Mr. Wenstob for the settlement of their account. It was he, and not the company, who retained their services.

[38] In *Garth A. Wright Law Corp. v. Greenshields*, 2002 BCSC 992, [2002] B.C.J. 1547, Master Baker, as Registrar reviewed the law on this point. He states, at paragraphs 17 - 19: [para17] The issue of personal/corporate liability in such circumstances has been considered in many cases. I have reviewed, for example, the decisions in *Salmond, Linge and Wenstob (Re)* (1983), 44 B.C.L.R. 162; *Barrigar & Oyen v. Haynes*, [1995] B.C.J. No. 900; and *Engel v. Beck*, [1994] A.J. No. 998. I take from these cases several principles:

- for a company to be liable for the cost of legal services, the work must be "for the direct benefit of the corporate persona" (Re: *Salmon* [sic] at p. 164);
- if the work is such that " . . . the good or ill of the company is not the prime object . . ." then the party liable on the account is the instructing individual (Re: *Salmon* [sic] at p. 164);
- in disputed matters of contract between a solicitor and a client the onus to establish respective versions is greater upon the solicitor than upon the client (*Barrigar & Oyen* at paras. 28 and 29);
- there is an onus upon a law firm to avoid this type of dispute, " . . . by obtaining a written retainer or personal guarantee from the individual to whom they hope to look for payment." (*Barrigar & Oyen* at para. 37, *Engel*, at para. 11);
- the fact that a solicitor/client relationship in a matter may have begun with the client in person, followed by the incorporation of a private company by that solicitor to carry on the matter, does not mean that liability for legal services remains with the individual in person, particularly if the individual is not clearly and explicitly advised of personal liability by the solicitor, and does not give a personal guarantee (*Engel* at paras. 6 and 11). [para18] Mr. Wright argues that, had litigation been required, he would have commenced the proceedings in the names of both Mr. Greenshields personally and of the company, as, he says, the relationship between the manufacturer and the business began with Mr. Greenshields personally. That may have been a prudent course, but it is (as litigation was never commenced) speculative. The fact that an abundance of caution may have required Mr. Greenshields' inclusion in that way does not, at this juncture, make him "the party charged". [para19] This was a matter that directly concerned the company; it apparently

significantly affected its retail sales operation. I cannot find that in the issue between the manufacturer and the company " . . . the good or ill of the company (was) not the prime object" or that the work was not". . . for the direct benefit of the corporate persona" (Barrigar & Oyen, above). Moreover, I conclude that the onus upon the solicitor to clarify exactly who would be responsible for the accounts in such circumstances has not been met.

- [39] When questioned as to why the Accounts were directed to HPL, Mr. MacRae testified that it has been his long-standing practice to bill a company for work related to estate planning. This, he testified, then allows the company to determine internally which individuals might be responsible for which portion of the work.
- [40] Based on my review of the documents, the shareholders, directors and officers of HPL are: Directors: Stephen Sander Paul Sander Mark Tara Sander Officers: Stephen Sander - President Paul Sander - Secretary Shareholders: Stephen Sander 2000 Class C and 1,450 Class H Stephen Sander (In Trust) 750 Class C and 550 Class D Paul Sander 650 Class C and 150 Class D Pauline Kim Sander 750 Class C and 150 Class D Karen Patricia Sander 650 Class C and 150 Class D
- [41] The solicitors, in responding to HPL's claims that they are not the client and are therefore not the "person charged" such that the Accounts might be reviewed, confirmed their policy (as noted) to bill the corporate entity, rather than individuals when estate planning work is undertaken. They also directed me to the initial letter to Mr. MacRae from Mr. Sanders on letterhead from "The Hollyburn Group of Companies" (Tab 2 - Exhibit 1). Additionally, they asked me to draw an inference from the fact that no complaints or comments had been made to them by HPL, Mr. Hilton (who wrote several times requesting additional information about the time recording on the Accounts) or Mr. Angus (who corresponded with the solicitors on behalf of HPL prior to this review) regarding this issue. They suggested that HPL should somehow therefore be estopped from arguing that it is not the client.

Conclusion

- [42] While to a certain extent, I agree that it was potentially improper (particularly for Mr. Hilton and Mr. Angus) not to have advised the solicitors of HPL's contention that they were not the entity to be charged with the Accounts, that does not in my view raise an "estoppel" to the argument made before me. The burden rests with the solicitors to prove the retainer. It would have been a very simple matter for the solicitors to have confirmed their retainer, in writing, not only as to the work they were expected to perform, but also as to the appropriate party to bill for their services.
- [43] In my view, the solicitors have not met the burden placed on them. Firstly, there is no retainer agreement between the solicitors and HPL. Secondly, the work done was clearly related to Mr. Stephen Sander personally (or Mr. Paul or Ms Kim Sander), not HPL. Thirdly, it is unclear from the documents and additional evidence before me that Mr. Stephen Sander had any authority to bind HPL in contract with the solicitors. While Mr. Sander is a

director of that company and the controlling shareholder, HPL has three directors and several shareholders. In my view, the solicitors may have needed a corporate resolution from HPL to authorise them to undertake the work (which was, essentially, for the benefit of Mr. Stephen Sander) and bill it for that work.

- [44] Finally, the work done was clearly for the benefit of Mr. Stephen Sander, Mr. Paul and Ms Kim Sander, personally. It may be that had the estate freeze proceeded, HPL might have benefited in some way from that work, but that was certainly not clear to me on the evidence put before me. It may be that any benefit "would have been only indirectly and coincidentally the result of that work". That does not, in my view, make the company (HPL) liable to pay the Accounts. (See Salmond, Linge and Wenstob (Re), supra.)
- [45] Much of the correspondence was directed to Mr. Sander personally, either at home or at the office. Much was also noted as "personal and confidential". Most of the meetings were with him personally, as well. In my opinion, the solicitors saw Mr. Sander as the client yet billed HPL in accordance with their "normal" billing practice. As I have concluded, if the solicitors wished to adhere to that practice and make HPL responsible for their fees, they needed to have confirmed that in writing.
- [46] Accordingly, I find that HPL was not the solicitors' client in this matter and therefore has no obligation to pay the Accounts. As no retainer has been established, there is no need for me to embark on a review of the reasonableness of the Accounts. Costs
- [47] Section 72(1) of the Legal Profession Act, supra, provides as follows: 72 (1) Costs of a review of a lawyer's bill must be paid by the following:
- (a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;
 - (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
 - (c) a person who applies for a review of a bill and then withdraws the application for a review.
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.
- [48] As I have decided that there was no retainer between the solicitors and HPL, it follows that HPL is entitled to its costs of this review.
- [49] Section 72(2) of the Legal Profession Act, supra, provides:
- (2) On a review under this Part, the registrar may . . .
 - (b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.

[50] In order to assist with the final resolution of this matter and to avoid an additional court appearance to assess costs, I am summarily fixing HPL's costs of this review at the sum of \$1,000. In setting this amount, I am mindful of the fact that this review occupied one full day, as well as the fact that HPL did not incur the disbursements of filing an appointment for review and serving it on the solicitors, this being the solicitors' review. "District Registrar K. Sainty"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/04/12/2004bcsc1223.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/campney-and-murphy-v-hollyburn-properties-ltd-2004>

Prepared on 29 October 2026 · Esheria