
CANADA / JUDGMENT

Fleming v. Albu

2013 BCSC 1051

COURT

Supreme Court of British Columbia

DECIDED

13 June 2013

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2013 BCSC 1051 Fleming v. Albu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fleming v. Albu,

2013 BCSC 1051

Date: 20130613

Docket: S129170

Registry: Vancouver

In the matter of the Legal Profession Act,

S.B.C. 1998, Chapter 9, s. 70

Between:

Robert Fleming

Law Firm

And

Mihaela Albu

Client

Before: Master McDiarmid

Reasons for Judgment

Counsel for the Law Firm:

R. Fleming

D. Cowper

Mihaela Albu appeared on her own behalf

Place and Date of Hearing:

Vancouver, B.C.

May 27, 2013

Place and Date of Judgment:

Vancouver, B.C.

June 13, 2013

- [1] By appointment filed December 31, 2012, Mihaela Albu (the "client") sought a review pursuant to Part 8 of the Legal Profession Act, S.B.C. 1998, Chapter 9, s. 70 [LPA] of the bill of Robert Fleming Lawyers (the "lawyer"). Attached to the appointment was invoice #82 dated November 30, 2012.
- [2] At a pre-hearing conference before Registrar Cameron on January 18, 2013, he made several orders. He granted leave to the client to amend the appointment to add a second account, the lawyer's invoice #114 dated December 31, 2012, to the appointment so that both accounts were reviewed at the appointment.
- [3] Registrar Cameron also ordered the client to deliver particulars of her objections and a list of documents she will be relying on to the lawyer. He ordered the lawyer to add any documents relied upon and deliver a common book of documents 30 days before the hearing. He ordered that the hearing be set for a date in May 2013.
- [4] The appointment, together with the account dated November 30, 2012, was entered in these proceedings as exhibit 1; the second account dated December 31, 2012 was entered as exhibit 1A. An affidavit sworn by the client and filed on May 13, 2013 was entered as exhibit 2. The common book of documents was entered as exhibit 3.
- [5] Objections were made to certain of the documents sought to be adduced by the lawyer and by the client. The objections pertained to letters from the lawyer and from the client to the Law Society of British Columbia.
- [6] From submissions from the parties, it was apparent that the letters (which I did not read) were essentially re-statements of the parties' positions and evidence, would in my view not have added to the evidence, and might have constituted a breach of solicitor/client privilege. The letters were excluded from exhibit 3.
- [7] The background is set out in paragraph 2 of the client's affidavit:

2. I have been a practicing dental hygienist for the past 17 years and in good standing with the College of Dental Hygienists of British Columbia. I had enrolled in the optional BSc-Dental Hygiene Program at UBC in 2003 with the goal of continuing my career with graduate studies in education. I had taken time away from my son and dedicated time and money to study towards this goal.

During my last academic year, 2007-2008, while having a strong academic standing (GPA of 3.25), I was given the privilege to gain teaching experience by tutoring a course in the Doctor of Dental Medicine (DMD) Program, which was a first year course titled Professionalism and Community Service (PACS 410). I enjoyed my tutoring and studying experience enormously.

- [8] In March 2008, one month before the client's graduation, the instructor of the client's last required dental hygiene course had given an assignment for completion by the client. In endeavouring to complete this assignment, the client attempted to obtain information from a survey she was trying to conduct. The manner in which she attempted to conduct the survey was apparently inappropriate, and the client was told that she could not use survey data that she was in the process of gathering. The evidence is that, at the time she was told she could not use survey data, she had never actually received any survey data.
- [9] There were other complications with the client's completion of the assignment, including the fact that a group of students of which she was a part were working together, but that group effort changed leaving the client alone to finish the assignment.
- [10] The next relevant facts are summarized in a memorandum sent to the lawyer by Mr. Cowper, copied to the client, dated December 18, 2012:

After being deserted by her fellow students, with only four days remaining to complete the assignment, Ms. Albu requested more time. She was given only an additional 24 hours.

As a result of these circumstances, Ms. Albu did not identify all of her quotations. Although all but one of the unidentified quotations was footnoted, on the basis that she had not used quotation marks or indenting to differentiate direct quotes from paraphrases, Ms. Albu was accused of plagiarism. The same marker noted that Ms. Albu's former work partner twice did not identify direct quotes, but no disciplinary action was taken against that student.

Without being given a fair opportunity to defend herself, Ms. Albu was referred to UBC's central disciplinary committee. Ms. Albu was also informed that, separately from any discipline imposed by UBC after the disciplinary hearing, she would receive a zero on the course.

At her disciplinary hearing, Ms. Albu did not oppose the accusations made against her. In the light of her extenuating circumstances, UBC decided the only penalty she would receive was a written reprimand.

Ms. Albu then commenced a formal appeal against the failing grade imposed by the Faculty of Dentistry. However, through her lawyer, Ms. Albu proposed that she drop her appeal in exchange for permission to complete a new assignment (the "Supplementary Assignment").

After a meeting between Albu and representatives of UBC, UBC provided, through its legal counsel, a proposed contract of settlement (the "Settlement"), including both a release of past claims, and a waiver of future claims.

This Settlement included provisions specifying that:

- i. UBC would provide Ms. Albu with two appropriate topics;
- ii. Ms. Albu would have 5 days to choose between the topics, and then a further six weeks to complete the Supplementary Assignment;
- ii. Ms. Albu would be allowed to register as a visiting student in order to obtain access to UBC Library resources;
- iv. Ms. Albu would release UBC from all liability relating to claims arising from its conduct prior to the release;
- v. Ms. Albu agreed not to seek any remedy based upon the grade she received for the Supplementary Assignment; and
- vi. if Ms. Albu was given a failing grade of the Supplementary Assignment, it would be counted as a second failing grade, triggering an automatic academic suspension for one year.

[11] The supplementary assignment received a failing grade, with the result that the client could not graduate.

[12] What happened next is set out in the client's affidavit at paragraphs 6 through 10:

- 6. I hired Miller Thomson LLP on July 21, 2009 for legal advice and to bring justice to the grading and missed graduation from the Baccalaureate Degree in Dental Hygiene in Faculty Dentistry at UBC. Miller Thomson LLP provided legal services for a period of 32 months, from July 2009 to March 2012. The legal work focused on obtaining an expert report to objectively assess and grade the supplemental assignment. The expert opinion was that my supplemental assignment was a pass. Therefore, there was an action filed during February of 2010 which claims breach of contract, breach of fiduciary duty and breaches of duty of care by the Defendant UBC. A copy of the pleadings and the particulars are attached as Exhibit A. A copy of the expert report is attached as Exhibit B.
- 7. Miller Thomson LLP tried to establish a negotiation and settlement framework on or about March 2011. By March 2012 there was no settlement outcome or substantive discussion with UBC. At that time, I paid Miller Thomson LLP \$74,151.95 in 23 monthly statements. Miller Thomson LLP spent over 56 hours reviewing chronological facts and evidence, academic policies and rules, case law in order to draft the pleadings. Miller Thomson LLP spent over 36 hours working on the particulars to the pleadings. I terminated my engagement with Miller Thomson LLP because the associate lawyer working on my file had moved on to another firm. The partner of the firm, Mr. Bois, was not familiar with my file and his hourly fee was approximately \$475 per hour. This fee was excessive for me.

8. I represented myself in the action VLC-SS-102743 against Defendant UBC starting March 2012 with some independent legal advice from various lawyers. For example, Mr. Sarna of the Boughton Law Corporation corresponded with me, reviewed the pleadings and provided me with legal advice pertaining to Case Planning Proposal for the months of April and May of 2012. Mr. Sarna's time spent on my case, hourly rate of \$260, the outcome to me (legal advice to move forward) and bill were reasonable. His invoice reflecting these services shows a bill of \$567.58. I find this bill reasonable. Mr. Sarna's invoice is attached as Exhibit C.
 9. During the Case Planning Conference on June 6, 2012, Honourable Justice Masuhara ordered the time frame for the exchange of the list of documents with Defendant UBC. I was directed to proceed with the discovery process in order to better position myself in a mediation process.
 10. I retained Mr. Alan Benson to help me with the discovery process and trial booking during July 2012. Mr. Benson reviewed the pleadings, the legal agreement and provided legal advice to me. During October 2012, Mr. Benson managed to reserve a trial date for January 4, 2014. Mr. Benson met with me for about three hours. His invoice for the entire services including reserving a trial date was \$1000. However, Mr. Benson was not sure if he was going to be able to prepare and represent me since he was outside the country quite a bit. I decided to look for another experienced legal professional. I attached Mr. Benson's invoice as Exhibit D.
- [13] The client then goes on to depose as follows:
11. I met Robert Fleming on or about November 5, 2012. I asked him to help me go on with the discovery process of my action, set the reserved trial date and help me graduate. Mr. Fleming indicated his willingness to represent me. Mr. Fleming told me, that, as an experienced lawyer he would need about one hour to review the critical documents. The critical documents he requested were: the pleadings, particulars to the pleadings, the legal contract I was required to sign with UBC and the expert report obtained by Miller Thomson LLP. He mentioned that his hourly rate was \$350. The hourly rate seemed reasonable to me. The time indicated by Mr. Fleming was also reasonable.
 12. Mr. Fleming also indicated that, once he reviewed the critical documents, he would direct his associate lawyer, Mr. Cowper, to book the trial date, dates for examinations for discoveries and request documents from UBC. The reason of using Mr. Cowper's work in my litigation was that it was more economical to me since Mr. Cowper's hourly rate was less than Mr. Fleming's hourly rate. Mr. Cowper's hourly rate was estimated at \$200. This was also a reasonable rate. I agreed verbally with this rate. Mr. Cowper was not present at the meeting. However, Mr. Fleming did not indicate the numbers of hours Mr. Cowper would need to spend in order to secure the reserved trial date, book discovery dates, review the case law or the statutory law governing UBC. Mr. Fleming did not indicate that Mr. Cowper would look at my chances of success in graduating or provide me with a memo about the strategic analysis of claim. Mr. Fleming did not indicate that he or Mr. Cowper would look at my academic paper and provide their opinion on it. The central issue of my 45 minute

[meeting] with Mr. Fleming was not my academic work.

- [14] The lawyer's recollection of the commencement of the relationship between the lawyer and the client differs. He testified, corroborated by his notes (exhibit 3, tab 1), that he received a voicemail from the client, which was transcribed onto a "post-it note" and reads as follows:

Prospective client called 15 Oct 9:30 am

Michaela Albu

778 865 0190

saw your website wants to talk with you regarding a case that involves a large institution. It's going to the SCC. Currently in discovery process.

- [15] Mr. Fleming testified that on the following day, October 16, 2012, he had a telephone discussion with the client, the gist of which he made notes of. The client recounted much of the history outlined above, told him that she has an expert opinion that her paper was excellent, that she sued the University of British Columbia ("UBC"), that Miller Thomson was acting for her, and that a new trial is set in April. The notes read "April 2012"; in his testimony, he confirmed that was obviously incorrect and she must have told him April 2013.

- [16] Mr. Fleming then identified four pages of notes taken at the meeting he had with the client on November 5, 2012. The notes make reference to "250K?" relating to potential damages, to "XFD → 1 days?" relating to the potential length of an examination for discovery, he obtained a copy of the client's driver's license, and concludes the following:

5K retainer - initial review

350/hr RSF

200/hr Cowper

She will bring file on Friday

we will do a proper budget etc.

- [17] Mr. Fleming testified the notes accurately summarized the discussion which resulted in the initial retainer between the lawyer and the client. He testified that he told the client that he and his associate, Mr. Cowper, would review the file, assess the chances of success, assess the potential cost, and let the client know all of that. He testified that this initial work would be done on an hourly rate basis with his rate being billed at \$350.00 per hour and Mr. Cowper's at \$200.00 per hour.

- [18] Although not contained in any documentation, he testified that he told the client that the maximum she would be charged for this work was \$5,000.00, even if the legal fees, billed on those hourly rates, together with taxes and disbursements, exceeded that amount.

- [19] On November 12, 2012, the client wrote a letter to Mr. Fleming which commences:

I am giving you the following items regarding VLC-SS-102743 [the action between the client as plaintiff and UBC, Leeann Donnelly and Bonnie Craig as defendants]:

[20] There follows 22 items commencing with item 1) list of documents referencing three boxes, items 2 through 17 referencing pleadings and other court documents, item 18 referencing correspondence Miller Thomson LLP and Rob Sieg, the lawyer for the defendants in VLC-SS-102743, item 19 referencing a memory stick, item 20 a notice to admit, item 21 referencing a report from Dr. Shroff, the expert retained by the client to review the paper for which the client was given a failing grade, and item 22 referenced as follows:

A \$5,000.00 cheque as a retainer for your professional legal services as to my instructions.

[21] The letter goes on:

I would like you to bring forward an application for a Summary Trial for the following reasons: [there follows a full page of the client's reasons. The underlining and bolding are in the letter]

[22] She concluded the letter by writing:

I would like to emphasize again the importance of good and clear communication between us. Mr. Sieg will try to confuse you and delay my graduation further. Any correspondence between you and Mr. Sieg should be [emailed] to me. Also, any phone conversation with Mr. Sieg should be followed with a written summary to me. I do hope to hear from you soon regarding the scheduling of the summary trial.

[23] On November 14, 2012, Mr. Fleming emailed the client, copying Mr. Cowper. The heading of the email (exhibit 3, tab 2) is "initial engagement". The body of the email is as follows:

Hi Mihaela

Thanks again for bringing in your file and your retainer cheque.

What we are going to do is an initial review of your file so that we can tell you what we think your chances of success are, likely winnings, and cost. We will put this information in a spreadsheet so we can assess the economics of your case and you can make the best decisions going forward.

At that point we will also know what sort of a retainer we will need to get on the record and will do up a formal engagement letter.

As we discussed, most of the work on your file will be done by Daniel Cowper, whose hourly rate is \$200. I will supervise and my rate is \$350 per hour.

I think we should be able to get back to you by the end of next week.

You are very welcome to give a call if you have any questions.

Best regards,

Robbie Fleming

d. + 1 604 682 1659

[24] The client replied with an email dated November 15, 2012 at 8:30:54 AM PST. It is reproduced at tab 3 of exhibit 3 as part of an email string which commences with the email reproduced in the preceding paragraph, and concludes with a forwarding of the email from the client by Mr. Fleming to Mr. Cowper at 8:49 a.m. on November 15.

[25] The body of the client's email is as follows:

Hi Mr. Fleming,

Yesterday I have sent the memory stick via email.

It contains a lot of information. I think the most essential is the correspondence as a "without prejudice" basis between Miller Thomson LLP, and later on myself, and Mr. Sieg starting in May 2011. In March 2011 Ms. Nguyen and Mr. Bois of MT met with Mr. Sieg to discuss the negotiations framework. Mr. Sieg requested a lot of information from us pertaining to the breach of the second agreement/contract I had to sign in January/February 2009. He denied some facts or remained quiet about others. These two sets of correspondence contain the main facts and arguments (in a more organized form) regarding the breach of the second contract - if we need to prove it. The broad question for 'defendant UBC' would be the academic purpose of having to sign a legal contract to redo an assignment because of 'plagiarism' for which other students were passed and protected. What then was the academic purpose of the disciplinary process?

[26] What happened next is set out on the two accounts.

[27] Both Mr. Fleming and Mr. Cowper testified on behalf of the lawyer. The import of the testimony is that their time is kept with a descriptor of what is being done. It is then posted to their billing program. It was billed on November 30, 2012 by invoice #82, the bill initially attached to the appointment, and then again on December 31, 2012 by invoice #114, the bill ordered by Registrar Cameron to be included in the review.

[28] It is apparent from the testimony of Mr. Fleming and Mr. Cowper, and from the explanation for the time set out on the two bills that Mr. Fleming gave brief instructions to Mr. Cowper on November 7, 2012. The file was opened following receipt of the retainer and documents on November 14, 2012. Mr. Fleming conducted an initial review of the file materials on November 24, 2012. Mr. Cowper reviewed the file November 26, 2012. The two lawyers met the following day and, following that meeting, Mr. Cowper had another strategy meeting and then reviewed the file in detail.

[29] There were some brief emails between Mr. Fleming and the client on November 26, 27 and 28, 2012. On November 26, Mr. Fleming apologized to the client for delay. In replying to that email, the client writes:

...I would like to ask your help in bringing an application for summary trial as mentioned in my letter to you on November 9, 2010.

[30] In testimony, she clarified that this date was wrong and she was in fact referring to her letter of November 12, 2012, which accompanied the three boxes of documents and the \$5,000.00 cheque.

[31] Mr. Fleming replied on November 28, 2012 as follows:

I don't know yet if a summary trial is appropriate - we are still in the review process and will get back to you by the end of this week.

[32] A further email exchange took place between Mr. Cowper and the client on November 29 and November 30, 2012. On November 29, Mr. Cowper emailed Ms. Albu. Part of the email is as follows:

I will need to discuss these matters in some detail with Robbie before we'll be able to give you an assessment of the strength of your claim, ...

[33] The following day, the client replied as follows:

The issue here, at this point in time, is not assessment of the strength of my case. It is a rather strategic one and setting a deadline - court date - is number one priority.

Please, read my letter with instructions dated November 9, 2012 [again in error referring to the November 12, 2012 letter].

...

I look forward to your strategic plan, cost associated and possible dates in court.

[34] Later that day, Mr. Cowper emailed back as follows:

Thank you for that clarification. I was asked by Robbie to help with assessing the strengths and weaknesses of the claim, and its estimated value, which are essential matters to understand before deciding on a legal strategy.

I understand that you are working on an economic loss spreadsheet. When will it be possible for us to take a look at that?

[35] This latter comment was with respect to work undertaken by the client to show the economic loss she wished to claim in the litigation against UBC.

[36] The December 31, 2012 bill sets out further work done on the file by Mr. Fleming and Mr. Cowper.

[37] On December 6, 2012, the client emailed Mr. Fleming as follows:

Hi Mr. Fleming,

It's been more than two weeks since you and Dan have been reviewing the documents I have provided you showing breach of contract on UBC side.

I assume you are ready to provide me with a legal [strategy] in helping me bring this law suit to a conclusion and the legal cost involved in each strategy. ...

[38] Mr. Fleming emailed back the same morning advising the client that he had had a long chat with Mr. Cowper and that Mr. Cowper was going to give the client a call to discuss.

[39] The discussion took place on Friday, December 7, 2012. The time records record 2.9 hours by Mr. Cowper, and the explanation for that time record is as follows:

Prepare for and hold telephone interview with M Albu to discuss facts; assess strengths and weaknesses of claim, and potential for recovery in order to decide on strategy; consider strategy in light of interview

[40] Four days later, the client wrote to Mr. Fleming confirming that she had had a two-hour discussion with Mr. Cowper. The email contains the following:

...I have asked him to review the University Act (specific numbers) related to the contract with Taylor Jordan and Chafetz. I also asked him to advise me on the possible legal strategies (which basically are full trial or summary trial), along with the cost involved.

[41] She then goes on to set out some additional instructions and then gives her opinion as to the strength of her case.

[42] In his testimony, Mr. Cowper testified in some detail what he did to justify the time he spent and recorded. He then recounted the telephone conversation he had on December 7, 2012. He had made notes which were exhibited as part of exhibit 3. He testified that it was difficult to get answers to the questions he was raising about the facts necessary to be proven for the client's case to succeed. He testified that at times the client was crying and that it was difficult to communicate with her. He testified that he told the client his conclusions about the chances of success and the cost effectiveness of the case.

[43] It was apparent that Mr. Cowper was endeavouring to explain to the client why this was not an "open and shut" [my words not his] case, when the client thought that it was relatively straightforward.

[44] Following the discussion, Mr. Cowper and Mr. Fleming then met and discussed the risks which were faced by the client, both with respect to liability and quantum. Then on December 17, 2012, Mr. Cowper prepared a detailed memo. His explanation of the 6 hours of time he testified he spent and recorded is as follows:

Consider strengths and weaknesses of claim; weigh the value of strategic alternatives; prepare memo setting out analysis of case, proposing alternative strategies

[45] I have reviewed the memo. It contains what is described in the explanation of the time kept. It consists of approximately two and one-half pages of outline and factual background, paragraphs setting out the legal theory, approximately 12 pages under the heading "Discussion of Key Issues," which seemed to me to thoroughly analyze the pluses and

minuses of the evidence and relevant law. He then set out a strategic plan for litigation and concluded with approximately four pages under the heading "Cost, Risks and Potential Recovery" setting out a detailed budget and estimations of potential damages, as well as alternative strategies. The memorandum concludes with a five-page appendix setting out a detailed factual chronology, referenced to documents which would presumably be used as evidence to prove the facts.

- [46] On December 20, 2012, the client emailed Mr. Fleming and Mr. Cowper giving some specific instructions requesting documents. The penultimate paragraph of the email is as follows "I am looking forward to your legal strategies and cost involved".
- [47] The next day, December 21, 2012, Mr. Fleming and the client had what Mr. Fleming characterizes as a "difficult conversation" on the telephone. He told the client what the problems were with her case. He gave his opinion of her case to her. He testified that she lost her temper. On that day, the client terminated the retainer of the lawyer.
- [48] Both Mr. Fleming and Mr. Cowper were cross-examined by the client. Their testimony was corroborated in large measure by notes and emails. I find them to be credible witnesses and accept their testimony, in particular where it differs from the client's.
- [49] It is noted earlier in these reasons, Registrar Cameron had made certain orders. In compliance with one of the orders he made, the client set out her objections to the lawyer's bills. The written particulars of the client's objections to the two bills are attached to the client's affidavit (exhibit 2) as exhibit "J".
- [50] Objection is also set out in her affidavit and in particulars paragraphs 12 through 20 and 23 through 28.
- [51] It is the position of the lawyer that the lawyer was retained at an upset price of \$5,000.00 to do an initial review of the client's file and tell her what her chances of success are, likely winnings and probable costs, to assist the client in assessing the economics of her case making decisions going forward.
- [52] On the other hand, the client's position as set out in the particulars of her objections, is that she gave specific instructions to the lawyer in relation to discovery, setting a trial date, reviewing about 40 pages of documents, and obtaining additional documentation as instructed in the December 20, 2012 email.
- [53] The client says that the lawyer ignored her instructions and that none of the work done by the lawyer was authorized or consented to.
- [54] The client states specifically that she did not instruct the lawyer to develop a strategy. Her position is the lawyer did not produce any substantial legal work, and that their bills do not justify any relevant substantial legal work, nor reflect any of the instructions given by the client. She says that Mr. Fleming and Mr. Cowper did not follow instructions, verbal or written, and focussed unethically on irrelevant issues and offended her personally.

- [55] Her testimony was at times in conflict with documents. She is not untruthful, but her recollection seems often reconstructed by which she wishes had occurred. The client's testimony, both by affidavit and on the witness stand, is contradicted by her own emails, emails sent by the lawyer, and by common sense.
- [56] I find that the retainer agreement entered into between the client and the lawyer was as testified to by Mr. Fleming. Mr. Fleming would perform legal assisted by Mr. Cowper at hourly rates for Mr. Fleming at \$350.00 per hour and for Mr. Cowper of \$200.00 per hour. The client, in paragraph 12 of her affidavit, acknowledges that those hourly rates are reasonable.
- [57] Both Mr. Fleming and Mr. Cowper testified as to their education and experience, and I find that those hourly rates are reasonable.
- [58] Although not set out in any emails, Mr. Fleming testified that the initial retainer would be capped at \$5,000.00 all inclusive. This is corroborated by the amount of retainer requested, which is confirmed both by the actual retainer amount given (a \$5,000.00 cheque) and by Mr. Fleming's note.
- [59] His November 14, 2012 email set out what the lawyer was going to do, and set out the hourly rates and who would be performing the work. A responding email sent November 15, 2012 confirmed that a memory stick had been sent by mail which contained "a lot of information". This is completely inconsistent with the stated position of the client that Mr. Fleming requested a \$5,000.00 retainer to review about 40 pages of documents, set a trial date, and set oral discovery dates. It is obvious that the number of documents reviewed is vastly in excess of 40 pages. They were contained in three boxes.
- [60] Although it is true that on November 30, 2012, the client's email did reference strategies, that is not inconsistent with Mr. Fleming's testimony about the oral retainer agreement, as the email contemplates receipt of a strategic legal plan and costs associated to enable the case to move forward. The client's email dated December 6, 2012, wherein she writes:

I assume you are ready to provide me with a legal [strategy] in helping me bring this law suit to a conclusion and the legal cost involved in each strategy. ...

corroborates the lawyers' testimony about the retainer and contradicts the position of the client that the work done by the lawyer was not authorized or consented to.

- [61] It is noteworthy that the particulars of objections make reference to a telephone call on December 7, 2012, consisting of 10 minutes giving instructions and "the rest of 60 minutes were spent answering Mr. Cowper's questions ..." whereas the time records, testimony, and the client's own email dated December 11, 2012, confirm that the discussion was two hours long.

- [62] In reviewing the bills, I am required to allow fees, charges and disbursements for services reasonably necessary and proper to conduct the proceeding or business to which they relate, and those authorized by the client.
- [63] The bills document time expended by Robert Fleming in the amount of 5.8 hours and time expended by Daniel Cowper in an amount of 25.30 hours for a total of 31.20 hours expended by the two lawyers who worked on the file. When HST is added, those accounts would total \$7,940.80. However, the fees were adjusted by \$2,625.71, plus HST, so that the bill was consistent with the oral retainer agreement entered into between the parties.
- [64] Had this bill been reviewed by me without regard to the upset amount, I would have reduced it because of duplication, in particular duplication when both lawyers were discussing strategies together or when Mr. Fleming was instructing Mr. Cowper.
- [65] I would also have reduced it because the detailed memorandum was not finalized until after it was apparent that the client was unhappy to the extent that it was arguable she did not authorize its finalization. Those reductions would not have adjusted the fees by the amount that was actually adjusted so as to bring the bill into line with the oral retainer upset amount.
- [66] One technical aspect that concerned me was the fact that none of the copies of the bills placed in evidence were signed.
- [67] The LPA, s. 69(3), is as follows:
- (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.
- [68] Mr. Fleming testified that the covering letters enclosing the bills were signed. He was not cross-examined on that testimony and I, therefore, find that the bills were in compliance with s. 69 of the LPA.
- [69] I have considered the factors in s. 71(4) of the LPA. The ones that are particularly applicable are s. 71(4)(a),(b), (d), (e), (f), and (g).
- [70] I find that the work done by the lawyer, which, of course, includes the work done by Mr. Fleming and Mr. Cowper, was reasonably necessary and proper to conduct the proceeding or business to which they relate. The "proceeding or business to which they relate" was to provide the client with legal strategies to help her bring the law suit to a conclusion, and provide a cost estimate involved in that strategy, or, put another way, advise the client what her chances of success are, likely winnings, and costs so that the economics of her case can be assessed.
- [71] I find that the work done by them and thus the fees billed were both reasonably necessary and proper, but also authorized by the client.

- [72] The result requested was an opinion to assist the client in moving forward. Although the client did not like the advice, that result was achieved.
- [73] The bills are allowed in full as presented at \$5,000.00 all inclusive.
- [74] I have considered s. 72 of the LPA. If the lawyer is seeking costs, the lawyer should write to the Supreme Court Scheduler, copied to the client, setting out what costs are claimed. Similarly, if the lawyer is seeking interest, that should also be set out in writing, and delivered in the same manner. The client should provide her response within 14 days of receipt of the lawyer's letter, which is deemed received seven days after it is mailed. That response is to be sent to the Supreme Court Scheduler, copied to the lawyer. Once I have received the written submissions, I will issue a memorandum following which a certificate will be signed.
- [75] If the lawyer is not seeking either costs or interest, the lawyer may submit a certificate for \$5,000.00, which when filed, will authorize the payment of the account from the funds held by the lawyer in its retainer trust account.

"Master R.W. McDiarmid"

MASTER McDIARMID

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