

CANADA / JUDGMENT

Goodwin v. Becker

2013 BCSC 2148

COURT

Supreme Court of British Columbia

DECIDED

26 November 2013

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

2013 BCSC 2148 Goodwin v. Becker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goodwin v. Becker,

2013 BCSC 2148

Date: 20131126

Docket: S100917

Registry: Vancouver

Between:

Norley Charlynnne Goodwin

Plaintiff

And

E. John Becker, E. John Becker Personal Law

Corporation, and Becker & Company

Defendants

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

Counsel for the Plaintiff:

L. Li

Counsel for the Defendants:

C. Forth, Q.C.

M. Van Nostrand

Place and Dates of Trial:

Vancouver, B.C.

February 28, March 1 - 4, 7 - 11 and 14 - 18, and April 12 and 13, 2011

Place and Date of Judgment:

Vancouver, B.C.

November 26, 2013

I. Introduction

- [1] Norley Goodwin brings this action against her former lawyer, John Becker, claiming damages for psychological injury and mental distress as well as other losses, that she alleges were caused by Mr. Becker's failure to properly represent her in a family law case. Mr. Becker denies the claim, asserting that in his dealings with and on behalf of Ms. Goodwin he met the standard of a reasonably competent and diligent lawyer.
- [2] Mr. Becker's representation of Ms. Goodwin commenced with a consultation in October 2002, which was prior to Ms. Goodwin's separation from her husband. The couple separated on February 1, 2003 after a 20-year relationship and 18-year marriage. Mr. Becker commenced a divorce action on Ms. Goodwin's behalf on March 21, 2003. In that action Ms. Goodwin sought a division of property with a reappportionment in her favour, child support for the couple's twin 17 year old boys (later, one son became self-sufficient and the other went on to post-secondary education), spousal support, and an order restraining Mr. Goodwin from disposing family assets or any other disputed property.
- [3] The family assets of the Goodwins consisted of:
- a) the family home, which ultimately sold for net proceeds of about \$331,000;
 - b) a cottage in Point Roberts which, after considerable debate and negotiation, the parties ultimately valued at C\$180,000;
 - c) RRSPs of Mr. Goodwin (\$145,000) and Ms. Goodwin (\$33,000);
 - d) three vehicles: one late-model vehicle owned by Ms. Goodwin (value disputed, but between \$19,000 and \$28,000), and two older vehicles owned by Mr. Goodwin (valued together at \$6,000); and
 - e) Mr. Goodwin's work pension.
- [4] Both parties asserted grounds for reappportionment of assets in their favour.

- [5] The family debts consisted of the mortgage against the family home and a line of credit on which \$25,000 was outstanding on the separation date and which increased to about \$40,000 by October, 2004.
- [6] Mr. Goodwin worked as a steam engineer and had earnings ranging from \$73,000 to \$82,000 from 2001 to 2004. Ms. Goodwin worked as an educator and administrator in early childhood education, and her earnings during that same time ranged from \$574 to \$37,000.
- [7] Following their separation the Goodwins continued to reside in the family home, and household expenses were funded through deposits made by Mr. Goodwin to a joint account. During the time Mr. Becker represented Ms. Goodwin, Mr. Goodwin's position was that although he was putting money into the joint account, Ms. Goodwin was spending the money foolishly. Ms. Goodwin's position was that Mr. Goodwin did not have a full understanding of the cost of managing a household and he was underfunding the account.
- [8] In the present action Ms. Goodwin alleges that Mr. Becker did not advance and resolve her claims in an expeditious way, leaving her homeless and living in her car at one point, and that the mental distress she suffered made her disabled. She claims that Mr. Becker failed to secure support, failed to secure her interest in her husband's pension and failed to discharge a mortgage on a townhouse she bought. After the retainer was terminated there were disputes over the legal fees claimed by Mr. Becker, which he enforced by asserting a solicitor's lien, then by a charging order entered into by consent, which Ms. Goodwin argues tied up her funds and caused her additional mental distress. Ultimately, the dispute over legal fees was resolved on the eve of an assessment before the registrar.
- [9] Intertwined in these events is Ms. Goodwin's fragile psychological state and history of depression. She attempted suicide in May 2003 and was treated at hospital. She repeatedly expressed suicidal thoughts to others. She was admitted to a psychiatric facility in September 2004. The role that the legal proceedings played in her psychological and psychiatric problems was an important issue in this trial.
- [10] Ms. Goodwin seeks significant damages for mental distress, aggravated and punitive damages, plus special damages of about \$52,000 for foregone support, an unaccounted-for debt, a mortgage broker's fee and legal fees she incurred after terminating Mr. Becker's retainer.
- [11] The volume of documents and detail in this case was considerable. Every step in the underlying matrimonial litigation and in the subsequent legal bill review was referred to in evidence and, in many instances, examined in a most exacting way. The following review of the evidence is not intended to reproduce that level of detail, but considerable detail is still required to put the issues in their appropriate context.

II. Admissions

- [12] The parties made extensive admissions. While helpful, many of the admitted facts duplicated or at least overlapped evidence given by witnesses, and care had to be taken where testimony varied from admitted facts. Many of the admissions have been incorporated into the chronology, discussed below.

III. Chronology

- [13] The many events in this case made a chronology essential. Attached as Schedule A is a chronology of significant events, derived largely from the admissions but also derived from documents and testimony.

IV. Witnesses

- [14] The following is a summary of the testimony of the principal witnesses. In Ms. Goodwin's case I have occasionally included references to certain dates or events (for example, the March 14, 2005 trial date), though she may not have done so herself, in order to give context for her evidence.
- (a) Ms. Goodwin
- [15] Ms. Goodwin noted that while her given first name is Norley, she prefers to be called Nora-Lee and that is how others know her. At the time of separation from Ross Goodwin she was 54 years old and she was 62 at the time of trial. She has four children, two from a first marriage and two from her marriage with Mr. Goodwin.
- [16] Ms. Goodwin reviewed her employment background. She has worked in various pre-school positions since 1982, including as a supervisor or program manager. Her peak earnings were \$37,000 per year, and they averaged \$32,000 to \$35,000 per year. Other than a two or three year period, she worked during the marriage. Her last work prior to the events in question was in 2002. At that point she quit a job as a child care consultant because it involved an excessive commute and because she was taking care of her aged mother, who was in failing health and who died in 2003.
- [17] Ms. Goodwin has a life-long tremor. Early in her life it was diagnosed as being related to cerebral palsy, but has since been described as a benign essential tremor. Her tremor is accentuated by stress and by fine motor tasks but, according to Ms. Goodwin, it has never affected her ability to work.
- [18] She acknowledged past psychological difficulties. She overdosed on medication at age 18. At age 21 she slashed her wrists at age 21 during her earlier unhappy marriage. In 1998 she saw her family doctor due to stress caused by her daughter's drug use. She maintained, however, that she did not have any psychological issues in between those times.

- [19] As noted earlier, Mr. Goodwin was a steam engineer employed by Domtar, earning income between \$75,000 to \$84,000 per year. Ms. Goodwin described him as an abusive alcoholic. Concerns about his behaviour prompted her to consult with Mr. Becker in 2002.
- [20] Ms. Goodwin separated from Mr. Goodwin on February 1, 2003. Again she attended on Mr. Becker. Early on, her thought was that a formal separation might prompt Mr. Goodwin to go to treatment, but after Mr. Goodwin filed an affidavit in the proceedings it became obvious that "things were blowing apart" and that they would have to go ahead with a divorce.
- [21] Ms. Goodwin testified that she told Mr. Becker she wanted a "50-50 divorce", that is to say half of the assets, and she told Mr. Becker to keep it as simple as possible so that she could move on in life. She thought that the legal fees involved might be \$30,000 to \$40,000, but she did not tell Mr. Becker of her fee expectations.
- [22] Ms. Goodwin's expectation was that the properties would be sold, with Mr. Goodwin possibly buying her out, and Ms. Goodwin would relocate with one of the sons.
- [23] Until the matrimonial home was sold, Ms. Goodwin lived upstairs and Mr. Goodwin either lived in the basement or at the Point Roberts cottage.
- [24] The lawyers for the respective parties corresponded about interim child and spousal support but reached no resolution. A legal action was then commenced. It would appear that a judicial case conference (JCC) was scheduled on one, perhaps two, occasions but did not proceed. On May 14, 2003 Mr. Becker served an application for interim child and spousal support. A statement of defence and counterclaim were filed on May 21, 2003.
- [25] Ms. Goodwin said that a responding affidavit of Mr. Goodwin came as a shock to her. She described it as "ugly" in that it contained every possible piece of negative information about her that could possibly be said. In what appears to have been a suicide attempt, she took whatever pills she could find. She was taken to hospital, treated, and released after a few hours.
- [26] Ms. Goodwin did not recall what became of the application for interim child and spousal support, but it transpired that Mr. Goodwin agreed to deposit his paycheque into a joint account so that Ms. Goodwin would be able to pay household expenses out of it. Ms. Goodwin said she was pleased with this solution.
- [27] After perhaps a month the arrangement with the joint account was changed. Mr. Goodwin told her that she was spending too much on groceries and so he thereafter left just \$300 in the account from his paycheque. She testified that when she reported this to Mr. Becker he merely looked at the bank statements and did nothing more. She did not recall if he said anything about bringing a court application.
- [28] Ms. Goodwin said that her husband took the position that she had never paid anything towards household expenses, but she had four shoeboxes of cheques going back to 1985. She left these documents at Mr. Becker's office so that he would use them as part of her case.

- [29] Asked what physicians she saw from May to December 2003, Ms. Goodwin said that because of her emotional state her family doctor referred her to a psychiatrist, Dr. Gopinath, and she also started with a support group that had two counsellors. She agreed that she was having panic attacks to some degree. Dr. Gopinath recommended medication and discussed electroconvulsive therapy but she resisted, saying "I don't like to mess with my body or my brain" and "I believe in my own strength".
- [30] As for Mr. Becker, she said that nothing seemed to be happening; she wanted her 50% of the family assets so she could move on. By March 2004 she became afraid of opening her mail because every envelope represented money or something that would cost her money. She took to putting Mr. Becker's correspondence, unopened, under the bed or in the trunk of her car.
- [31] Ms. Goodwin said that she did not work at all in 2003, but in 2004 she taught early childhood education to student teachers. She modified this in her later evidence to say that she worked from October 2003 to July 2004, earning \$600 every two weeks. During this time her debts increased and she was only making the minimum monthly payments on them.
- [32] Ms. Goodwin said that, by contrast, Mr. Goodwin worked throughout this time, except for a brief time when he was on strike for three to four weeks. I pause to note that Ms. Goodwin's evidence as to the duration of this strike conflicts with one of the admissions, which is that Mr. Goodwin was on strike from fall 2003 to early 2004. Ms. Goodwin said that in addition to his regular work, Mr. Goodwin obtained work in Whistler through his brother and did some work as a web designer. She gave documents that evidenced these things to Mr. Becker.
- [33] A trial was scheduled for 2004, but it did not take place. Ms. Goodwin thought that it did not proceed because both the matrimonial home and the cottage had not yet been sold. Ultimately, an offer was accepted on the matrimonial home, with completion set for mid-August 2004. Her expectation was that she would get her share of the sale proceeds soon after completion.
- [34] With her teaching job ending in July and the matrimonial home sale completing in mid-August, Ms. Goodwin arranged to house-sit for a friend for three weeks commencing on the completion date. Ms. Goodwin later revised her evidence to say that her house-sitting arrangement was for just two weeks, ending around August 24.
- [35] She testified that she did not know what she was going to do afterward, she was getting scared and she felt alone and homeless. She thought she might stay at the Point Roberts cottage but Mr. Goodwin would not consent. She also pondered renting a place, but renting was problematic because she could not demonstrate that she had a reliable source of income. She told Mr. Becker about these problems, and looked to him for advice. He said that he would try to get \$10,000 for her, presumably from the proceeds of sale of the matrimonial home. She swore an affidavit for a court application, but was not aware what happened to that application. She understood that Mr. Becker attempted several times to obtain an advance but was unsuccessful.

- [36] When asked if Mr. Becker ever recommended a course of action for her housing situation, Ms. Goodwin said he once lightheartedly said "there's always the Ramada". Ms. Goodwin said that this would have cost her \$3,000 a month and the hotel room would not have accommodated herself and her sons, as well as a dog that she was about to acquire.
- [37] She acknowledged that she swore an affidavit on August 3, 2004 for a court application as well as a Form 89 financial statement, but she did not indicate a context for these documents.
- [38] The August 3, 2004 financial statement indicated that her Visa balance was \$8,000. Thereafter she bought a cell phone, which was acquired so that she could communicate with the college with which she expected to obtain work, and also to maintain contact with Mr. Becker and with her sons. She also charged a new laptop computer to her Visa.
- [39] Because the college was located in Abbotsford, she decided to look for a detached house, later a townhouse, to purchase. She located a townhouse that she liked and on July 27, 2004 she entered into a contract to purchase it for \$296,892.
- [40] Ms. Goodwin thought that she would have no difficulty making a down payment of \$200,000 and carrying a mortgage of \$100,000, for which the monthly payments would be just \$600, less than what it would cost to rent a place. She thought her share of the property sale proceeds together with her share of RRSPs (\$60,000) would suffice to make the \$200,000 payment and pay Mr. Becker's fee, which she now thought would be between \$40,000 to \$60,000. The matrimonial home sold for \$438,000, and she believed that she would receive \$150,000 to \$155,000 in net proceeds as her share after payment of the outstanding mortgage.
- [41] As for ongoing mortgage payments, she expected to be able to pay these from a combination of spousal support and income from her college work. She said she expected that the mortgage on her new home would be substantially paid down when the cottage sold.
- [42] Ms. Goodwin testified that she thought she would have her share of the proceeds of sale of the matrimonial home within two or three weeks of the completion date of August 12, 2004.
- [43] When asked why she felt she should purchase this townhouse, Ms. Goodwin gave the following reasons:
- (a) the townhouse was located in Abbotsford and her son wanted to go to college in Abbotsford;
 - (b) the college where she thought she might get employment was nearby;
 - (c) the realtor was a nice Christian man;
 - (d) a Christian development company had built it;
 - (e) it was a sensible place, with room in the unfinished basement to construct a bedroom for her son or to rent out; and

- (f) she said "I believe God led me to this place", explaining that she felt God had come into her life to lead her to a safe place.
- [44] When asked if she ever questioned Mr. Becker about when the sale proceeds would be available, Ms. Goodwin said she never asked him and had simply assumed that the proceeds would be available to her. She said that she told Mr. Becker at one point that she had nowhere to go and when it took longer than September 30th to release the money, she said she was "losing her mind".
- [45] When asked if Mr. Becker expressed concern about the purchase, Ms. Goodwin said that he mentioned something about getting a less expensive home, but said that she is a businesswoman, she knew it was a good investment and knew she could afford it. She indicated as well that she was also expecting to get monies from an inheritance. For those reasons she felt that Mr. Becker's advice was not wise. The expected inheritance was from an elderly cousin who, as it turned out, died two years later.
- [46] After her housesitting stint finished she went to Mr. Becker's office and insisted that he come out to the parking lot look at her car so that he could see that she was living in it. He was not shocked, as she expected him to be. She lived in her car for three days.
- [47] Asked why she did not stay with friends or her cousin, Ms. Goodwin said "I was ashamed to tell anyone".
- [48] While she was housesitting at her friend's house she thought everything would be fixed by the time the stint was over, but she got increasingly anxious as the two weeks wore on. She saw Dr. Gopinath during the time she was living in her car. He told her she could not live in her car and he was very worried about her, and he suggested that she go into the hospital. Ms. Goodwin said "I was thinking of jumping in the river" so she agreed with Dr. Gopinath to admit herself into a psychiatric hospital. Records show that she was in hospital from September 3 to October 4, 2004.
- [49] Ms. Goodwin was unaware of anything that Mr. Becker might have done to obtain spousal support for her during September or October 2004. Eventually she was able to access \$55,000, which she used as a down payment. She agreed that on October 4, 2004, the court ordered \$100,000 to be released to each party, with the amount being "uncharacterized".
- [50] The contract of purchase and sale was amended by extending dates at various times, ultimately changing the financing subject clause to October 15. On October 8, 2004, the seller agreed to provide a vendor's mortgage, which Ms. Goodwin regarded as "another miracle, so another reason I thought it was coming from God". The builder's mortgage expired on March 31, 2005.
- [51] Ms. Goodwin said she was unaware that in June 2004 Mr. Becker had agreed with opposing counsel that the net proceeds of sale would be held in trust until a final agreement or court order. She said that she never knew that she could not get her money out. She acknowledged, however, that at this point she was too anxious to open any mail from Mr.

Becker. She only began to email Mr. Becker after she purchased a laptop computer; before that, both Ms. Goodwin and Mr. Goodwin were still living in the matrimonial home and the home computer there was not private.

- [52] After she was released from the psychiatric facility on October 4, 2004, Ms. Goodwin went to live with her cousin. She was in the hospital on a voluntary basis so she merely said that she was leaving. Asked about her emotional state at that time, Ms. Goodwin said "I don't remember much - how did I end up in a psychiatric ward?" As for her plans for living arrangements for her sons, Ms. Goodwin said that they were to go with their father. As it turned out only one son went with him because the other went to stay with friends. After her hospital stay she lived on credit cards and a \$10,000 line of credit that she obtained after the matrimonial home mortgage was paid off.
- [53] Ms. Goodwin continued to expect Mr. Becker to obtain spousal support for her but to the end of 2004 Mr. Becker did not do so.
- [54] On October 25, 2004, Ms. Goodwin signed a document entitled "Acknowledgement" by which she acknowledged, among other things, a list of outstanding bills for legal fees and disbursements that were attached to the Acknowledgment. Ms. Goodwin said that she told Mr. Becker "I can't read things" and that she would merely sign whatever he put in front of her. She said he replied that he would leave her to read it on her own, but she said that although he was gone "a really long time, I signed it within 30 seconds". She said that Mr. Becker neither explained the document to her nor told her to get independent legal advice. She added the following:

He always knew I couldn't read. He was my main contact. He was the trusted person I told everything to and he had all the power.

- [55] A JCC was conducted before Mr. Justice Crawford on January 6, 2005. Ms. Goodwin acknowledged that she attended the JCC but said she only remembered it "to some degree". She said Mr. Becker never brought up the subject of spousal support at the JCC. She said opposing counsel "talked and talked", causing her to have an anxiety attack and so she left. She explained that she was scared because opposing counsel "was so powerful and articulate".
- [56] On January 10, 2005 Mr. Becker made a settlement offer to opposing counsel. When asked if she recalled giving Mr. Becker settlement instructions, Ms. Goodwin said "I don't think I would have". Ultimately, all property issues were settled in February 2005 and evidenced in minutes of settlement signed by the parties and their counsel. Support issues were left to a trial date in March.
- [57] In February 2005 Ms. Goodwin sent Mr. Becker several emails informing him of her desperate financial situation. In one, she told Mr. Becker that she thought Mr. Goodwin was preparing to leave the country, which she described as "frightening", as she thought Mr. Goodwin would not make support payments from abroad. In two emails sent on February 7,

2005 Ms. Goodwin said "I'm starting to feel afraid of you" ("you" being Mr. Becker) and "I am terrorized over and over again". She said the latter referred to her fear of becoming homeless again. She urged Mr. Becker to address the payment of support.

- [58] In an email of March 3 she provided a long list of things she wished pursued, including support, access to the cottage, various financial records of Mr. Goodwin, various furnishings and other personal goods, and a "freeze" on the Point Roberts property.
- [59] Ms. Goodwin testified that in March 2005 she and Mr. Becker had a long conversation concerning disclosure of her medical records. Although Mr. Becker had obtained these records, she insisted that they not be disclosed. She said Mr. Becker never explained why these records were needed, nor why he had contacted Dr. Swift, her family doctor.
- [60] Ms. Goodwin said she asked Mr. Becker a number of questions concerning her financial picture, but did not get any answers. She continued to be fearful of losing her house.
- [61] When asked if Mr. Becker told her that he had received \$90,000 for her interest in the cottage, Ms. Goodwin said, "I think I'm responding that I wasn't".
- [62] As noted earlier, the trial was set to commence on March 14, 2005. Ms. Goodwin's position to that point was that she wanted a period of time to get settled, and once that had occurred she would go back to work. Mr. Goodwin's position was that she should be working; he later said that she should go on disability.
- [63] The March 14 trial turned into a settlement conference. Despite the settlement discussions that took place both in and out of the courtroom, Ms. Goodwin continued to believe that this was the trial and that the judge was going to decide the case on the basis of the material before him. She said the proceedings "just ended". At no time did Mr. Becker raise the issue of arrears of support, which was an important issue for her. She did not understand that her arrears claim had been dismissed, and she did not accept that she had given up this claim. Mr. Becker also did not raise the question of characterizing the earlier \$100,000 to each party, nor did he raise the question of the payment of her debts.
- [64] Although figures of \$1,250 for spousal support and \$400 for child support were discussed, she did not agree to these figures and thought the judge was going to rule on them.
- [65] Ms. Goodwin acknowledged receiving \$25,000 from Mr. Becker on March 30, 2005. She recalled that this money was remitted to her so that she could pay off her debts (totalling about \$24,000) prior to applying for a mortgage. She had by this point engaged a mortgage broker for this purpose. She wanted her mortgage payments to be around \$500 per month. She testified that the vendor's mortgage was expiring "sometime in March"; later she said it was expiring on May 31.
- [66] In April she made several inquiries of Mr. Becker as to whether she was to cash in her RRSPs. Her plan was to use these proceeds to minimize the amount of the new mortgage.

- [67] Ms. Goodwin signed an RRSP spousal rollover document on May 15 and a mortgage loan agreement on May 31. The new mortgage was for \$140,000, which was more than she had wanted.
- [68] When she went to the office and signed all the papers Mr. Becker's staff congratulated her. She assumed that the vendor's mortgage would be paid out in full. Mr. Becker never told her that it had not been paid out.
- [69] On July 4, 2005 Ms. Goodwin again raised concerns about her husband leaving the country. On July 13 she expressed worries about being homeless.
- [70] The documents indicate that Mr. Becker's office left various messages with Ms. Goodwin from July 15 to July 19 asking her to come to the office to sign papers needed for the refinancing.
- [71] By a letter dated July 14 the vendor confirmed that the mortgage would be extended to September 30, 2005. On receipt of this letter Ms. Goodwin wrote to Mr. Becker to say that the vendor is "angry and dealing to foreclose". In her testimony Ms. Goodwin conceded that "foreclose" was her word and was not mentioned in the vendor's letter.
- [72] On July 22 Mr. Becker sent her a reconciliation of settlement proceeds and mortgage payout calculation. Although Ms. Goodwin testified that she had no recollection of meeting Mr. Becker that day, it is clear from other evidence that she did so. This was the last time the two met.
- [73] As for the reconciliation, Ms. Goodwin said she did not understand it. It referred to legal fees of \$62,500 billed to date, and she knew that was not the final figure and did not know whether that figure included a fee discount that had been mentioned several times. Although Mr. Becker told her to liquidate her RRSPs, she did not agree because "there were too many unknowns".
- [74] On August 9, 2005 Ms. Goodwin made a complaint to the Law Society. By this point her emotional state was "desperate". She went to church to pray. The minister saw her distress and introduced her to a parishioner, a lawyer, Melody Martin. Ms. Goodwin said she did not give many documents to Ms. Martin because at that time she was shredding documents in preparation for ending her life. Her pressing concern was her home; she thought "it all seemed lost".
- [75] Ms. Martin, in turn, introduced her to Russell Tretiak, Q.C. She left her affairs to them as she was "beyond hope". Mr. Tretiak mentioned a "charging order", which she understood to be necessary in order to get her money from Mr. Becker, but she said Mr. Becker would then "own part of my house". She said, "I was terrified. It was like he [Mr. Becker] was there". Ms. Goodwin nonetheless agreed to the charging order because of Mr. Tretiak's recommendation.

- [76] A higher mortgage was arranged through Mr. Tretiak's office. She said, "It broke my heart" and "it was beyond my affordability; it was staggering". Still, she agreed to it. One financial institution declined her. Ms. Goodwin said, "This was the third or fourth time I faced homelessness".
- [77] The new mortgage was for \$195,000, with monthly payments of \$1,100.
- [78] She cashed in her RRSPs and paid out the vendor's mortgage. While she felt good about that, she cancelled a "house blessing" ceremony because the charging order made it such that "it was not my house".
- [79] Ms. Goodwin received Mr. Becker's final bill in January 2006. The total billings of \$103,000 astonished her. She thought it would be in the range of \$45,000 - \$47,000, and no more than \$60,000. The final bill was around \$15,000.
- [80] A "taxation" was arranged, but the dispute was settled. The sum of \$33,000 was returned to her, and the charging order was removed from her house. She would not sign a general release because she felt she had been wronged, she wanted to tell her story and she wanted justice.
- [81] Ms. Goodwin said she is claiming a portion of the legal fees she incurred because all she had ever wanted was a "50-50 divorce". Had Mr. Becker done this for her she would have had \$200,000 and been able to return to work. She said, "My life has been destroyed by this".
- [82] In cross-examination, Ms. Goodwin said:
- a) in her complaint to the Law Society she said she had been forced to live in her car for three weeks, but she had lived in her car for just three days;
 - b) while she told the Law Society that Mr. Becker ought to have known that Canadian law could not deal with the cottage in the U.S., the actual strategy that had been adopted was to settle on the basis that Mr. Goodwin would purchase her interest in that property;
 - c) while she told the Law Society that Mr. Becker never sought arrears of support, she agreed that he mentioned arrears in the March 14, 2005 hearing before Slade J.;
 - d) at the hearing before Slade J. she was not allowed to speak. She then said "I may have spoken" and then, "I remember talking about my disability", and she agreed that she told the judge she hoped to return to work in the fall of 2005;
 - e) prior to the completion of the matrimonial home sale she told Mr. Becker that she might stay at the cottage;
 - f) her general plan concerning where to stay included offers from two friends for her to house-sit;
 - g) when the house-sitting stint ended she "started getting a sick mind" and did not know where she was going to go;

- h) she was reluctant to allow Mr. Becker to develop any medical evidence (evidence that might have addressed her ability to work) and repeatedly told him not to get her medical records;
- i) despite that evidence, on January 14, 2005 she signed an authorization to allow Mr. Becker to obtain Dr. Swift's clinical records. She explained her signing by saying "I wasn't reading what I was signing";
- j) she became afraid of anyone "that was on the other side of the fence", including Mr. Becker and later, his lawyer, Mr. Turriff;
- k) on July 20, 2005 she told Mr. Becker that the builder was "angry and dealing to foreclose", yet as of July 14, 2005 the builder had agreed to extend the payment deadline to September 30, 2005;
- l) by letter dated October 20, 2005 the builder extended its mortgage payment deadline to November 30, 2005;
- m) by October 2005 she was aware of Mr. Becker's total billings, and by November 1, 2005 she knew that his additional unbilled work totalled about \$15,000;
- n) Ms. Martin told her that the charging order was "a winning situation for us";
- o) Ms. Martin told her that there was no law that Mr. Becker could have used to stop Mr. Goodwin from moving to Bermuda and that action could be taken only if he stopped paying support;
- p) in April 2009 Mr. Tretiak brought an application on her behalf to restrain pension payments to Mr. Goodwin due to arrears of support that had accumulated since fall 2005 (child support) and November 2006 (spousal support);
- q) at the hearing before Slade J. on March 14, 2005, Mr. Goodwin's counsel (Mr. Findlay) brought up the subject of her applying for disability benefits; her application for CPP disability benefits was accepted effective September 2006 and she received a retroactive payment;
- r) in further legal proceedings in 2009 she swore an affidavit in which she said she discovered in 2009 a web blog maintained by her ex-husband. When asked if she had, in fact, been accessing this blog since 2005, Ms. Goodwin did not deny it, saying "I had trouble with dates". Again in 2010 she swore an affidavit saying the blog was recently discovered, but she said "it's accurate in my head with the dates problem I have";
- s) she went to her family doctor on several occasions in 2000 and 2001 complaining of work-related stress and anxiety, with symptoms of insomnia, crying, loss of appetite and an inability to concentrate. She was off work from January 15 to 28, 2001. In February 2001 she complained of "staring into space" and depression. She agreed with a December 2001 medical note that said, "depressed - no joy in Xmas tree";

- t) she started a new job in April 2002 but quit a month later because it involved too much driving;
- u) she did not work from April 2002 to January 2004, saying that during part of this time she was looking after her mother until she passed away in January 2003, and then her husband injured himself in a fall. She acknowledged the accuracy of medical notes of March 17, 2003 ("can't work - brain fried", "can't read, feels lost, grieving mom's death"; "tremor worse"; "lack of interest", "forgetfulness" and "exhausted all the time");
- v) she attempted suicide by taking pills on May 26, 2003;
- w) she agreed that the family doctor's notes of May 29, 2003 were accurate ("can manage for short periods of time but then regress", "can't see any light at end of tunnel", "mother has died - misses her 'guardian angel' - saved her twice in last 3 days", "makes contract not to commit suicide"); she agreed with similar doctor's notes from June 3, 2003 ("crying less, in a fog", "can do simple things", "distracted - can't figure out where to go, what I am going to do");
- x) she did not recall the August 15, 2003 JCC at all;
- y) she agreed that she changed her instructions to Mr. Becker concerning the Point Roberts cottage by saying that she wanted to buy out her husband instead of the reverse;
- z) she agreed that she discussed with Mr. Becker a draft settlement proposal, a final version of which was sent to opposing counsel on February 23, 2004;
- aa) she broke into the Point Roberts home and took some items. She did not know if this prompted a court application from her husband;
- bb) she knew she had to cash in RRSPs to buy the townhouse;
- cc) she conceded that after the application before Crawford J. on October 4, 2004 she wanted to have further matters heard only by Crawford J. and she told Mr. Becker's staff that she would wait for this to happen;
- dd) she agreed that she did not want to conclude the property settlement by signing it because she was concerned her husband was leaving the country;
- ee) she agreed that Mr. Tretiak's November 2005 plan to fund the refinancing partly through redeemed RRSPs was the same Mr. Becker's plan, but she said the difference was that Mr. Becker would not tell her what his final bill would be and she did not trust Mr. Becker.

(b) Mr. Becker

[83] Mr. Becker is a lawyer who was called to the bar in 1981. He has had a practice as a general practitioner in Pitt Meadows for many years. He said the mix of his work has changed over time but consisted of real estate, personal injury, family law, and wills and estates, with family law consisting of perhaps 20% of his practice. During the time in question he was a sole practitioner but had a staff of five.

- [84] Mr. Becker said that he met Ms. Goodwin in late 2002. His working relationship with her was good until the fall of 2005. He said Ms. Goodwin was known to everyone in the firm and was at the office frequently. He said Ms. Goodwin was much more a part of the fabric of the firm than other clients.
- [85] Mr. Becker said that Ms. Goodwin never appeared scared and, generally, was impeccably dressed when she attended at the office.
- [86] Mr. Becker recalled only one occasion when Ms. Goodwin displayed anger towards him. He had obtained clinical records concerning Ms. Goodwin, pursuant to an authorization that she had signed, because he wanted to show a medical basis for claiming spousal support. When he gave a copy of the records to Ms. Goodwin she was immediately very angry that he had obtained the records and that he had read them. She took all of the records from him and later told him that she had methodically torn them up and flushed them down the toilet.
- [87] Mr. Becker started receiving emails from Ms. Goodwin commencing in the latter part of 2004. The volume of the emails increased as time went on. While he made an effort to respond to each of the emails by reply email or telephone, Ms. Goodwin's later emails were more confused and were very lengthy, and so he tended to respond to these by telephone.
- [88] When asked to describe Ms. Goodwin as a client, he said that up to July 2005 she was challenging because it was difficult to get her to focus on the important issues and to get her to confirm instructions. He said that she went "back and forth" on the issue of reapportionment of assets, which party was going to buy the other party's interest in the Point Roberts property, and child support. As to the latter, he said that one, then two, then neither of the children were living with her, or the boys were with her for the short-term or long-term. She also tended to focus on the minutiae of the division of house contents, with Mr. Becker telling her to forget about arguing over replaceable household effects. Nonetheless, she would still send him list after list of items that she sought in the division of property.
- [89] Mr. Becker said he found it difficult to deal with opposing counsel due to Ms. Goodwin's changing instructions.
- [90] By the end of July 2005 the matters that were outstanding on Ms. Goodwin's file were as follows:
- (a) refinancing her townhouse;
 - (b) the Domtar pension, but just the administrative task of securing her divided share; and
 - (c) equalizing the RRSPs and liquidating them.
- [91] Mr. Becker took a five-day holiday in August 2005 and on his return on August 15, 2005 he found a letter from the Law Society dated August 11, 2005, which enclosed an email from Ms. Goodwin with an extensive list of complaints.

- [92] Mr. Becker spent some time crafting a response to The Law Society, which he sent on September 12, 2005. Despite the complaint, he indicated that he was prepared to see to the needed refinancing of the townhouse as he thought it reasonable to complete this task. Ms. Goodwin, however, did not accept his offer.
- [93] On September 15, 2005 Mr. Becker received a letter from lawyer Melody Martin complaining that Mr. Becker had failed to address a court-ordered requirement that Ms. Goodwin file a Form 89 financial statement no later than September 15, 2005. Mr. Becker responded the next day by noting that Ms. Goodwin had effectively terminated his retainer because of her Law Society complaint. In communicating with the Law Society Mr. Becker learned that Ms. Goodwin had sought alternate counsel, so he asked Ms. Martin to clarify the extent of her retainer. At this time he was taking steps to engage his own counsel, one to deal with the Law Society complaint and the other to deal with the potential taxation of his fees. For the latter issue he retained Gordon Turriff, Q.C.
- [94] On September 21, 2005 Russell Tretiak came on record for Ms. Goodwin.
- [95] The Law Society proceedings took an extended course. Ms. Martin advocated on Ms. Goodwin's behalf by way of letters to the Law Society of May 1, 2006 and February 5, 2007. The Law Society concluded its file on October 22, 2008 without any further action, other than expressing some concerns. The fee dispute was finally settled in September 2007. When these matters were concluded Ms. Goodwin started an action against him.
- [96] Mr. Becker reviewed the chronology of his file. He first met with Ms. Goodwin on October 22 and, on her instructions, drafted a letter to Mr. Goodwin addressing issues on separation.
- [97] Mr. Becker said that Ms. Goodwin felt that an interest-free mortgage from her parents ought to be a basis for reapportionment in her favour, but Mr. Becker noted that against this was an inheritance of \$200,000 that Mr. Goodwin had received two years prior. He concluded that a likely result was an equal division of assets, but with spousal support payable to equalize their respective earnings. Reapportionment came up on a number of subsequent occasions, with instructions alternating between pressing for reapportionment and agreeing to an equal division. Spousal support, however, was an issue throughout his retainer.
- [98] Mr. Becker said that Ms. Goodwin brought in reams of banking and other records, insisting that they were relevant and important and should be part of the court case. This behaviour was a continuing feature up to March 2005. At the end, Mr. Becker's file was 5 to 10 boxes in magnitude.
- [99] The Goodwins were dealing directly with one another until February 2003, when Mr. Goodwin retained counsel, Bart Findlay.

- [100] On February 21, 2003 Mr. Becker sent Ms. Goodwin a third account for his services, and in his covering letter he said "in light of your current financial situation we are not looking for payment on the outstanding account nor are you going to be assessed any carrying charges." Mr. Becker explained that he did this because he thought the issues would be resolved in the near term; also, he wanted to send accounts to her so that she would be kept aware of the accumulating expense.
- [101] Notes made by Mr. Becker on February 25, 2003 indicate that Ms. Goodwin was looking for work. They met again the following day and Ms. Goodwin instructed him to commence an action, claiming a divorce, division of property with reapportionment in her favour, and spousal and child support.
- [102] Counsel corresponded on several matters, including how to value the Point Roberts property as well as spousal and child support. Mr. Becker proposed child support of \$1,000 and spousal support in the amount of \$3,000 per month. Mr. Goodwin's counsel responded that his client would assume primary responsibility for all of the household expenses (as both parties were still living in the matrimonial home), including the mortgage and the cost of supporting the children, and so he was prepared to pay just \$500 per month in spousal support.
- [103] On March 20, 2003 Ms. Goodwin dropped off a note from her doctor indicating that Ms. Goodwin was medically unable to work.
- [104] The action was commenced on March 21, 2003. Mr. Becker said that it took some time to get opposing counsel to agree to accept service.
- [105] Mr. Goodwin filed a statement of defence and counterclaim on May 21, 2003. He sought a reapportionment of family property in his favour, primary residence of the children with him and for Ms. Goodwin to pay child support.
- [106] Mr. Becker interviewed Ms. Goodwin at length on May 12, 2003. She indicated that she was actively looking for employment. It was her husband's position that she was choosing to remain unemployed. Ms. Goodwin told Mr. Becker that her husband was not providing her with sufficient monies for household expenses. Accordingly, Mr. Becker prepared and delivered a notice of motion and affidavit claiming a variety of interim relief, including interim spousal and child support.
- [107] Mr. Goodwin responded to the application by way of an affidavit sworn May 23, 2003. Included in his various assertions were that Ms. Goodwin was choosing to be unemployed, that she was spendthrift and that he paid most of the household expenses. Ms. Goodwin was very upset by her husband's affidavit, and she overdosed on pills and was admitted to hospital. Mr. Becker adjourned the May 30, 2003 hearing date and informed opposing counsel that he was not in a position to obtain Ms. Goodwin's instructions concerning the husband's affidavit, statement of defence, counterclaim and financial statement. A JCC originally set for June 3, 2003 was adjourned to August 19, 2003.

- [108] By June 27, 2003 the parties had worked out an interim financial arrangement between themselves.
- [109] A JCC was held before Mr. Justice Chamberlist on August 19, 2003. Prior to this point Ms. Goodwin had indicated that she wanted to have the Point Roberts cottage, but by the time of the JCC Mr. Goodwin had made it clear that he would not relinquish his interest and so discussions centred on buying out Ms. Goodwin's interest. They agreed to appraise the property and to share the appraisal cost. Chamberlist J. said that Ms. Goodwin had to disclose medical records and reports, explaining that any claims of Ms. Goodwin for spousal support or reapportionment of family property based on her physical limitations had to be supported by medical evidence. A further JCC was set for October 24, 2003 and a three-day trial was set for April 5, 2004.
- [110] Consent orders confirmed these and other matters, which included these terms: (1) the plaintiff would provide the defendant with a signed authorization for medical records; (2) a s. 57 declaration that there was no possibility of reconciliation; and (3) a mutual s. 67 declaration restraining the parties from disposing of family assets.
- [111] As it turned out, Mr. Becker did not send any clinical records to Mr. Findlay because Ms. Goodwin refused to allow him to do so.
- [112] In September 2003 Ms. Goodwin informed Mr. Becker of her suspicions that her husband was earning undisclosed income through his brother's company. Mr. Becker said that he pursued these issues by way of her affidavits, correspondence with opposing counsel and an examination for discovery of the husband, but he did not obtain any evidence to support Ms. Goodwin's claims.
- [113] The JCC scheduled for October 24, 2003 was adjourned by consent to December 17, 2003.
- [114] Mr. Becker said that Ms. Goodwin told him that she was looking to purchase accommodation for herself and her son following the sale of the matrimonial home. On November 4, 2003 opposing counsel wrote as follows:

We have been informed by our client that your client is looking at purchasing a town house worth approximately \$245,000. Our client is concerned that your client may be incurring debts well beyond which she could reasonably hope to pay by reasons of the division of the assets. We are hereby putting you on notice that should your client incur such a debt she is doing so on her own accord and at her own peril.

- [115] Mr. Becker said that he discussed his own concerns with Ms. Goodwin, in particular the risks of putting so much capital into a residence designed to accommodate her sons who would be graduating in 2004 and who would likely be moving away. He suggested that she consider something much more modest, perhaps rental accommodation, pending the resolution of the property and support issues.

- [116] On December 1, 2003 Mr. Becker wrote to both Dr. Swift (Ms. Goodwin's family doctor) and Dr. Gopinath (the psychiatrist) informing them that he had been retained in matrimonial proceedings and that he might in future require a report from them. He enclosed a signed authorization for release of medical information to each of those practitioners.
- [117] Mr. Becker met with Ms. Goodwin on December 16, 2003, the day before the JCC. The matrimonial home had not yet sold. Ms. Goodwin made it clear that the reapportionment of property division was still a live issue. She also said that her health issues were interfering with her efforts to obtain work.
- [118] At the December 17, 2003 JCC they discussed all pending matters, including the sale of the matrimonial home, Ms. Goodwin's job situation and her alleged financial mismanagement. They discussed having a settlement conference since the parties did not seem to be all that far apart. Mr. Goodwin was on strike at his own employment from late 2003 to early 2004. A settlement conference was set for January 12, 2004.
- [119] Mr. Becker met with Ms. Goodwin before the settlement conference. Ms. Goodwin continued to maintain that her husband was making undisclosed income. By this point she had changed her position on property division back to an equal division. She agreed to a buyout of her interest in the Point Roberts property, but she was unhappy with the appraisal and indicated that she would commission her own appraisal in March. An additional issue concerned the line of credit secured against the matrimonial home. Mr. Goodwin took the position that Ms. Goodwin ought to bear half of that debt because it had been incurred to pay family expenses while he was on strike.
- [120] On January 9, 2004 Mr. Becker sent to Mr. Findlay a detailed settlement proposal.
- [121] A settlement meeting was held on January 12, 2004. A full range of issues was discussed. The line of credit stood at \$25,000 on the date of separation but the balance was \$37,000 at the time of the meeting. Mr. Goodwin agreed to provide a breakdown of that \$12,000 increase. Mr. Goodwin suggested that Ms. Goodwin should apply for a CPP disability pension, but Ms. Goodwin resisted because she felt she was capable of obtaining employment. Mr. Becker said that Ms. Goodwin thought her husband's suggestion was a bit insulting and that it was designed solely to reduce his support obligation. By letter dated January 20, 2004, Mr. Becker informed Mr. Findlay that Ms. Goodwin was not prepared to apply for CPP disability pension, stating: "our client is adamant that she does not have a disability which is either 'severe' or 'prolonged' as those terms are used in the benefits program."
- [122] The strike at Mr. Goodwin's work ended by January 30, 2004. Mr. Becker wrote to Mr. Findlay that Ms. Goodwin had obtained employment, teaching a night school course five nights per week, four hours per night, at a wage of \$19 per hour. He also indicated that he would be forwarding a comprehensive settlement proposal. Mr. Becker prepared a draft settlement proposal and reviewed it with Ms. Goodwin on February 13, 2004.

[123] On February 18, 2004 Mr. Becker sent Ms. Goodwin his latest account for services rendered, and he confirmed that she was not being assessed any carrying charges and that he was content to wait for payment until the net sale proceeds from the family home were available. Mr. Becker also sent Ms. Goodwin a summary of accounts rendered to date, together with a retainer confirmation. He said:

While we are prepared to carry on without payment at this time, we wish to ensure that you are comfortable with the accumulated account totals and are prepared to commit to payment in full at such time as funds are available.

[124] Mr. Becker explained that he prepared the account summary and retainer confirmation because he wanted to make it very clear to Ms. Goodwin that she did have outstanding accounts that had to be paid and he wanted to ensure that she was content with these and was intending to pay them. He said "if she had issues with the bills I had to know now." Mr. Becker added that Ms. Goodwin never complained about any of his accounts up to the date of trial.

[125] Opposing counsel delivered a settlement proposal on February 22, 2004, proposing an equal division of property and asserting that there was no merit in Ms. Goodwin's argument for reapportioning assets in her favour. As to the Point Roberts property, Mr. Findlay said "we are not prepared to consider any value than that attributed to the property in the formal appraisal." He proposed child support payable to Ms. Goodwin of \$431 on the basis that each of the parties would have one child living with them, and he proposed spousal support of \$500 per month for one year or until Ms. Goodwin obtained full-time employment.

[126] Mr. Becker met with Ms. Goodwin on February 27, 2004. Ms. Goodwin now wanted Mr. Becker to obtain the second appraisal of the Point Roberts property instead of getting it herself as she had earlier indicated she would do. As well, she told Mr. Becker that she felt her job was precarious and that she was very concerned about her health.

[127] On March 1, 2004 Mr. Becker responded to the proposed \$500 per month spousal as a "non-starter", as was the proposal that spousal support be limited to one year. Mr. Becker enclosed some reworked figures showing net disposable income figures, based on his client's income at \$18,000 per year.

[128] On March 4, 2004 Ms. Goodwin again told Mr. Becker that she was very concerned about her health and wanted him to cancel the upcoming examination of discovery of her husband, to cancel the trial, to finalize the pensions and RRSPs and to work out what RRSPs had to be liquidated to pay his accumulated accounts. Ms. Goodwin told Mr. Becker that from time to time she felt her head was "going to explode".

[129] The next day Ms. Goodwin telephoned Mr. Becker to tell him that she was having a major breakdown and that she was undergoing counselling and was seeing a psychiatrist. The trial was adjourned by consent as a result.

[130] On April 16, 2004 Ms. Goodwin told Mr. Becker that she had done nothing to select an appraiser for the Point Roberts property and that she would do that after the family house had sold. Also on that date Ms. Goodwin advised Mr. Becker that her daughter had been diagnosed with some form of cancer and was scheduled for surgery. She told him that she was very worried about her daughter's condition.

[131] On May 12, 2004 Ms. Goodwin told Mr. Becker that she had phoned two appraisers and that Mr. Becker should follow up with one of them to ensure that the appraiser would provide what Mr. Becker needed. Mr. Becker contacted the appraiser the next day. On that same date Ms. Goodwin told Mr. Becker that she was having a difficult time coping with her daughter's illness and her job.

[132] On May 18, 2004 Mr. Becker received a contract of purchase and sale of the matrimonial home signed by both Mr. Goodwin and Ms. Goodwin. Ms. Goodwin had neither sought nor received advice from Mr. Becker about the contract terms nor the sale price.

[133] On May 20, 2004 Mr. Becker served the new appraisal of the Point Roberts property on opposing counsel. The appraised value was US\$143,000.

[134] On May 26, 2004 Mr. Findlay agreed to allow Mr. Becker's office to handle the residential conveyance of the matrimonial home on the condition that all funds would be held in trust pending final resolution of the matter or court order.

[135] On June 8, 2004 Mr. Becker wrote to Mr. Findlay saying as follows:

We are advised by our client that her income will end effective the end of May 2004.

We require your client's confirmation as to his commitment to funding the joint operating account at some increased level given our client's lack of income. We would hope we could confirm this without the need for an interim Court Application given the sale of the home scheduled for August 12, 2004. Our client needs the security of your client's commitment either through a letter from your office or Court Order.

[136] Opposing counsel responded the same day:

We confirm our client will continue to make the household payments as he has been doing. We can further confirm your client continues to have access to utilization of his accounts.

[137] On July 5, 2004 Ms. Goodwin told Mr. Becker that she was investigating the prospect of renting a three-bedroom place following the sale of the family home. Mr. Becker confirmed this in a July 5, 2004 letter to Ms. Goodwin:

We can offer you no assurance that the matters will be resolved by that time and as a consequence you need to ensure that you have a place to go. It also makes sense for you to rent on a temporary basis to ensure that you are comfortable with one or both boys living with you.

- [138] Also on July 5, 2004 Ms. Goodwin told Mr. Becker that a Point Roberts realtor wanted to buy the Point Roberts property and she wanted to see if the appraiser would increase his appraisal to US\$150,000. The appraiser subsequently indicated that he felt his existing appraisal was accurate. Ms. Goodwin also wanted Mr. Becker to obtain for her certain dates at which she could stay at the Point Roberts property.
- [139] On July 8, 2004 Ms. Goodwin told Mr. Becker that she broke into the Point Roberts property by breaking a window and took items from the house. She also said she wanted to move to the cottage when the family home was sold.
- [140] On July 13, 2004 Ms. Goodwin told Mr. Becker that she had no money and was getting by on credit. Mr. Becker asked her what she was doing about her accommodation and she said that living in the cottage made sense. After discussions with Mr. Becker they concluded that she needed an order for exclusive possession of the cottage.
- [141] On July 14, 2004 Mr. Findlay wrote with a proposal for the division of property. Mr. Findlay took the position that the line of credit was largely attributable to family expenses, that the value of their respective vehicles ought to be equalized by credit to Mr. Goodwin of \$8,500 and that a more realistic value of the Point Roberts property was between US\$120,000 and US\$125,000 or C\$156,000.
- [142] On July 15, 2004 Ms. Goodwin instructed Mr. Becker to respond to the settlement offer as follows:
1. Her net equity in the family home should be based on a sale price of \$439,000 instead of the actual sale price of \$426,000;
 2. Mr. Goodwin would not get a credit for keeping the lower value motor vehicle but each party would keep their own vehicle; and
 3. Mr. Goodwin would acquire Ms. Goodwin's interest in the Point Roberts property on the basis of a valuation of \$143,000 US.
- [143] On July 15, 2004 Mr. Becker served on opposing counsel an application to seek access to the Point Roberts property. That same day Ms. Goodwin told Mr. Becker that she had identified a rental opportunity for herself, but it involved a one-year lease. The rent was \$1,200 per month. Mr. Becker offered her a discount of \$2,500 in his legal fees to make up any inequality she might feel as a result of the proposed settlement. Ms. Goodwin gave Mr. Becker a detailed list of contents in the Point Roberts cottage that she wanted, which included such items as a garbage can and a wheelbarrow.
- [144] Also on July 15, 2004 Ms. Goodwin told Mr. Becker that for her short-term accommodation, she would put her goods in storage and stay with her cousin.

- [145] On July 21, 2004 Mr. Findlay served Mr. Becker with a motion seeking a divorce order, a division of assets and an order for exclusive use of the Point Roberts property by Mr. Goodwin.
- [146] On July 22, 2004 Mr. Becker proposed to opposing counsel that each party be given an advance of \$10,000 from the net sale proceeds of the family home. Mr. Findlay responded that his client did not agree to any advance; instead he suggested that the parties simply resolve all of the property issues.
- [147] An examination for discovery of Mr. Goodwin was conducted on July 20, 2004.
- [148] On July 23, 2004 Ms. Goodwin told Mr. Becker:
1. she did not get the rental that she had been interested in;
 2. Dr. Gopinath had suggested to her that she go into the hospital on a voluntary basis; and
 3. she was looking at townhomes to purchase, one located in Abbotsford and other in Maple Ridge. Each had an asking price of \$291,000.
- [149] Mr. Becker told her that she would not have money for that magnitude of purchase and that she could obtain appropriate accommodations for a single person for much less. He advised her against the purchase, saying it was not in her best interests to make this commitment.
- [150] On July 26, 2004 Mr. Becker had a further discussion with Ms. Goodwin about her accommodation options. If property division was resolved shortly, she would purchase a townhouse. If not, she would put her goods in storage and look for rental accommodation. Because of the uncertainty of her income, she would live in the Point Roberts cottage pending a resolution of interim spousal support.
- [151] On that same date Mr. Becker gave Ms. Goodwin a billing and credit summary that showed total billings to that point of \$50,224.16. Included in that summary was the proposed fee discount of \$2,500 to resolve the valuation question on the Point Roberts cottage, as well as a further \$4,200 discount to dissuade Ms. Goodwin from pursuing her multiple lists of household effects by giving her, in effect, a lump sum with which she could replace ordinary household items. Mr. Becker also reviewed with her a detailed comparison of the various aspects of property division. The result of this discussion was a counter-proposal on property division that Mr. Becker sent to Mr. Findlay on July 28, 2004.
- [152] On July 30, 2004 Mr. Becker provided Ms. Goodwin with a cheque for \$2,000 out of his general account. Mr. Becker testified that he did this because Ms. Goodwin said she needed money to relocate, specifically to move her goods to a storage locker. Ms. Goodwin told Mr. Becker that she was being sent to the hospital.

- [153] Mr. Becker met with Ms. Goodwin on August 3, 2004. By this point a realtor had faxed to him a copy of a contract of purchase and sale Ms. Goodwin had signed to purchase a townhouse in Abbotsford for \$296,892, subject to financing. She told Mr. Becker that she was going to finance this purchase with the proceeds of the property division and liquidated RRSPs (and presumably a mortgage). At the same meeting, Ms. Goodwin told Mr. Becker that, as for her accommodation, she was "all over the place right now", staying with friends.
- [154] Mr. Becker told Ms. Goodwin that the house purchase was not going to work because she would not have a settlement of the property dispute in time.
- [155] Also on that date, Ms. Goodwin told Mr. Becker that she would be housesitting for a friend until August 26, 2004. She also told him she had seen her psychiatrist the day before and was approved for immediate admission to hospital if she wished to do so.
- [156] On August 5, 2004 Mr. Becker wrote to Mr. Findlay serving an affidavit of Ms. Goodwin and requesting a date to hear an interim support application during the week of August 16. In her affidavit Ms. Goodwin indicated that she hoped to be re-employed in September 2004 by the same college that had employed her up to June 2004. Later, a hearing date was set for August 26, 2004.
- [157] Mr. Findlay's opposing materials were delivered on August 24. On August 25 Mr. Becker wrote to Mr. Findlay, addressing concerns that the application might not proceed because of late-delivered materials, and he again proposed that the application be resolved by consent through an interim distribution of \$10,000 to both parties. Mr. Findlay rejected this proposal and he again urged a global settlement.
- [158] Mr. Becker met with Ms. Goodwin on August 25, 2004. He learned from her that she had not achieved much progress on her living accommodations. Mr. Becker told Ms. Goodwin he had made arrangements for her to stay up to one month at a local hotel, if she wanted. He made these arrangements using the firm's credit card.
- [159] He had a telephone conversation with Ms. Goodwin later that same day to discuss the opposing affidavit just received from Mr. Findlay. Ms. Goodwin told Mr. Becker that she was not well enough to seek employment at that time. He discussed with her the need to gather medical evidence and she authorized him to get a medical-legal report from her psychiatrist, Dr. Gopinath.
- [160] Mr. Becker understood at this time that Ms. Goodwin would do one of the following: stay with friends, go to the Point Roberts cottage, go to a hotel or admit herself to hospital.
- [161] Mr. Becker met with Ms. Goodwin the next day (August 26) to finalize her response affidavit. While she mentioned her frail condition in her affidavit she also indicated that she remained hopeful that her employer would be calling her back in late September or October to teach more early childhood education courses.

- [162] At some point during that meeting she asked Mr. Becker to come out to see her car, and he saw that she had organised some personal effects in her car. He agreed that around this time Ms. Goodwin told him that she was staying in her car. He said he was bewildered by this news because they had been speaking for weeks about various options for her accommodation.
- [163] The interim support application was re-set for September 10, 2004, but in the meantime Ms. Goodwin admitted herself to Ridge Meadows Hospital. Mr. Becker said that the latter development "changed the ground rules for settlement [of the asset division] significantly", as Ms. Goodwin now had a compelling argument for reapportionment in her favour. Ms. Goodwin instructed Mr. Becker to pursue reapportionment. The interim support application was re-set to September 24, 2004.
- [164] Mr. Findlay continued to press for a global settlement of property division. He suggested that Ms. Goodwin's stress over this dispute was largely responsible for her psychiatric problems. He also suggested that she apply for a disability pension or EI sick benefits. Mr. Becker testified that he obtained the application forms for a disability pension and discussed these with Ms. Goodwin, but she objected to the definition of "disability" that had to be met because she continued to maintain that she was capable of working. She made no disability pension application during the time Mr. Becker represented her.
- [165] Mr. Becker received Dr. Gopinath's report on September 9, 2004. Mr. Becker also requested a medical-legal report from Ms. Goodwin's family doctor, Dr. Swift, to address Ms. Goodwin's neurological condition and any limitations that this condition posed for her.
- [166] On September 22, 2004 Ms. Goodwin informed Mr. Becker that no classes were available for her to teach until April 2005.
- [167] On September 23, 2004 Mr. Findlay wrote to propose settlement on the basis of equal division of assets and spousal support of \$500 per month. Mr. Becker reviewed this offer with Ms. Goodwin on September 27, but he did not recommend acceptance. The offer was not accepted.
- [168] The support application was heard on October 4, 2004. It would appear that there was a cross-application by Mr. Goodwin for equal division of assets as evidenced by a notice of motion to that effect. Crawford J. ordered that the line of credit of approximately \$40,000 be paid from the monies held in trust and that each party receive \$100,000. He made it clear that the \$100,000 paid to Ms. Goodwin was not to be characterized as a distribution of property and she was free to argue that it ought to be characterized, at least in part, as retroactive spousal support.
- [169] In his reporting letter to Ms. Goodwin, Mr. Becker said:

As the funds are held in a separate interest bearing client Trust account there is an administrative process required to draw the funds. As per our discussion we enclose our Trust cheque payable to you in the amount of \$20,000. It is very important that you establish yourself in rental accommodation as soon as possible. We confirm that it is your intention to obtain accommodation that will allow [son] Ian to reside with you somewhere in the Abbotsford area.

Now that funds are available we must sit down and go through the outstanding legal accounts. There [are] sufficient funds to pay off the outstanding balance owed to us. We will not require a retainer at this time given the balance of funds secured.

[170] As noted, Mr. Becker provided Ms. Goodwin with a cheque for \$20,000. He sent a cheque for a further \$30,000 about a week later.

[171] Despite Mr. Becker's recommendation concerning rental accommodation, Ms. Goodwin went ahead with her purchase of the Abbotsford townhouse. By this point she had negotiated with the vendor for a vendor's mortgage that would come due on May 31, 2005. The completion date was October 29, 2004. Mr. Becker found various aspects of the transaction objectionable. In a letter to Ms. Goodwin of October 22, 2004 he said:

Frankly I find the whole scheme objectionable and it is my recommendation to you not to enter into the Agreement on those terms. We have had this discussion before and I expressly confirm your instructions to me that you wish to proceed with the transaction notwithstanding my recommendation that you do not do so.

We again reiterate that the sum of \$55,000 is available to you out of the \$100,000 advance for the purposes of the purchase and any related financial activities. The balance of \$45,000 is to be applied to your outstanding legal account. This will not pay the outstanding account and your will be left with [a balance owing]. The legal account will increase over the next short while as you get settled in your new home with your son, Ian. The issue of spousal support and child support will have to go back to Court within the short term as your husband refused to pay you anything. As previously discussed, you are over extended on your new home purchase. I can certainly appreciate the "bigger picture" issues which make the home purchase very desirable for you. We are not in a position to finance the litigation to any significant degree. As your husband will not agree to any further advances without Court Order you will have to make arrangements with friends or family to loan you the money to carry on through the Trial date of March, 2005.

[172] Mr. Becker met with Ms. Goodwin on October 25. At that meeting he presented her with a document entitled "Acknowledgement" concerning his outstanding bills to her. In summary, Ms. Goodwin acknowledged and agreed that: (1) she had outstanding legal bills totalling about \$65,000 to date, (2) she was aware of her right to have another lawyer give her independent legal advice before signing the Acknowledgment, (3) she was satisfied with Mr. Becker's services, (4) each of the bills rendered were final bills, and (5) the bills were fair and reasonable. The Acknowledgement also contained the following provisions:

5. I have asked you to continue to provide legal services to me and I do not have the funds with which to provide you with either payment of the outstanding account. I have asked that funds made available to me be applied to my purchase of a new home rather than pay the outstanding legal account.
 6. As a condition of continued legal services being provided, you have asked me to provide this confirmation.
- [173] Mr. Becker said that he reviewed the Acknowledgement with Ms. Goodwin, including the clause in which she acknowledged the opportunity for independent legal advice. Ms. Goodwin told him she was insulted he would say that as she was very happy with both his services and his accounts. Ms. Goodwin signed the Acknowledgement.
- [174] Mr. Becker's office handled the conveyance of the Abbotsford townhouse and he did not charge Ms. Goodwin for those services. A further \$25,000 was transferred from monies in trust to complete the transaction, thus leaving just \$25,000 in trust from the \$100,000 ordered advanced by Crawford J. No monies were applied to the outstanding legal bills.
- [175] Mr. Becker received Dr. Swift's report on November 4, 2004. Dr. Swift discussed the limitations caused by Ms. Goodwin's tremor as well as her psychological problems. Mr. Becker considered the report helpful both for the purposes of the spousal support application and for the reapportionment argument. Ms. Goodwin was content to have the report released to opposing counsel. Mr. Becker set down a spousal support application for November 24, but Ms. Goodwin told him that she did not want to go back to court unless it was before Crawford J., who was not available until January 6, 2005. Mr. Becker told her that this was a mistake, but Ms. Goodwin was firm. A hearing was therefore set for January 6, 2005 before Crawford J.
- [176] Toward the end of November 2004 Ms. Goodwin reported to Mr. Becker that Mr. Goodwin, who was by then living in the Point Roberts cottage with his girlfriend, planned to move to Bermuda. Ms. Goodwin was concerned that he would take all his assets with him. She had heard of this plan from one of her sons, but she told Mr. Becker that he was not to inform Mr. Findlay of the source of that information. This hampered Mr. Becker in using the information. Mr. Becker addressed Ms. Goodwin's concerns by pointing out that Mr. Goodwin was bound by an order restraining him from disposing of assets. When asked at trial why he did not take steps to divide Mr. Goodwin's work pension and to equalize the RRSPs, Mr. Becker said that the restriction on disposal of assets had been agreed to by the parties from the outset, he had a lot to do on other fronts and it was simply not a priority.
- [177] Ms. Goodwin was upset that her husband's girlfriend was staying at the Point Roberts cottage. She told Mr. Becker that she was going to the cottage to pack up the girlfriend's belongings and put them in a dumpster. Mr. Becker advised against doing so. Evidently Ms. Goodwin did go to the cottage, but took only a few things belonging to her and her son. This action prompted a sharp letter from opposing counsel.

- [178] Early December 2004 saw the beginning of frequent emails from Ms. Goodwin. In an email of December 3 Ms. Goodwin raised a variety of issues, most involving her difficult financial situation. She asked when she would be receiving support money, a puzzling question given that it was Ms. Goodwin who had insisted that the support application be adjourned so that Crawford J. would hear the matter. She also raised the matter of buying out Ms. Goodwin's interest in the Point Roberts cottage, a reversal of her earlier position that Mr. Goodwin would buy out her interest. A buyout by Ms. Goodwin was also seemingly out of the question following Ms. Goodwin's purchase of her townhouse. It also emerged that she had spent a considerable sum (one document suggests it was \$8,000) finishing the formerly unfinished basement of her townhouse. Other issues raised in these emails included expenses relating to the children (or at least the one son who was in post-secondary education, the other being self-sufficient), the son's education fund and educational expenses, and detailed lists of personal effects. As to the latter, Mr. Becker said that there was an endless debate over the division of "pots and pans".
- [179] The January 6, 2005 court hearing was scheduled as a JCC. Mr. Becker said that his plan was to resolve all matters with the assistance of the judge and to have Ms. Goodwin's current inability to work acknowledged. However, when opposing counsel addressed the issue of spousal support he characterized Ms. Goodwin's situation as "electing not to work" and mismanaging her finances. The only spousal support offered was minimal in amount (\$750 per month) and limited in duration. Ms. Goodwin walked out. Mr. Becker said that he could not resolve any of the issues because Ms. Goodwin was no longer present, although it appears that the parties had by that point achieved a substantial consensus for settlement on property division.
- [180] On January 10, 2005 Mr. Becker forwarded to opposing counsel a settlement offer on property division. The principal component was the offer to sell Ms. Goodwin's interest in the cottage for C\$ 90,000, a significant premium over the US\$ 123,000 valuation of the cottage. There was also no adjustment for the values of the automobiles, which was a substantial benefit to Ms. Goodwin because her vehicle was valued around \$25,000 while Mr. Goodwin's were valued at \$6,000. Mr. Becker said that these adjustments in Ms. Goodwin's favour were to compensate her, at least in part, for past spousal support. The matter of ongoing child and spousal support was left outstanding. With only minor variations the offer was accepted on January 13, 2005, though because of those variations it was effectively a counter-offer. Mr. Becker recommended to Ms. Goodwin that she accept the offer, and ultimately she did so.
- [181] On January 14, 2005 Ms. Goodwin signed a medical authorization allowing Mr. Becker to obtain Dr. Swift's clinical records. Mr. Becker thought nothing of it at the time as it was entirely consistent with discussions he had had with Ms. Goodwin about the need for medical evidence as part of her application for spousal support.

[182] In emails of January 21 and 27 Ms. Goodwin again raised fears that Mr. Goodwin was leaving the country. In an email of February 7 she said:

Ross [Goodwin] tells [son] Ian that you talk to Findlay all the time .. do you? I'm starting to feel afraid of you.

[183] In late January Ms. Goodwin again expressed concerns about her financial situation and pressing expenses, including a new transmission for her son's car and his tuition. Mr. Becker gave her a cheque for \$4,000 from his general account. Ms. Goodwin then asked that Mr. Becker bring an interim support application on an "emergency" basis. Mr. Becker requested dates to again appear before Crawford J., who was seized of all interlocutory applications. February 15 was secured as the hearing date. Opposing counsel took various technical objections to the setting of the hearing and indicated further that he would be opposing the application on the grounds that by the time of hearing it would be less than a month until trial.

[184] Ms. Goodwin met with Mr. Becker on February 9 to review a draft affidavit for the support application. Mr. Becker provided Dr. Swift's clinical records to her for her review, as he had done with Dr. Gopinath's records. In his testimony Mr. Becker said words to the following effect:

Much to my shock she was appalled with the very fact that I had them and that I had read them. She demanded that I confirm that I had made no copies, demanded that I give her the binder and made me promise that I would get no other medical records.

[185] Ms. Goodwin followed up the meeting with a highly indignant email to Mr. Becker confirming that he was not to obtain or possess any clinical records relating to her. In testimony, Mr. Becker said that her reaction was very disheartening because Ms. Goodwin had been made well aware of the evidence that had to be assembled on the medical and mental health issues, and now he felt hamstrung in his ability to advance arguments on spousal support based in any way on Ms. Goodwin's physical or mental limitations.

[186] The support application was heard by Crawford J. on February 15. He ordered that \$10,000 be advanced to Ms. Goodwin; \$5,000 to be paid immediately and a further \$5,000 subject to obtaining certain further information and further order. Mr. Becker gave Ms. Goodwin a cheque for \$5,000 on February 17. That same day Ms. Goodwin made clear to Mr. Becker that he was not to deal directly with Dr. Gopinath.

[187] Throughout his retainer Mr. Becker sent bills to Ms. Goodwin that, at least latterly, included billing summaries showing amounts billed and paid. The last bill rendered during the course of his retainer was issued March 3, 2005. The accompanying summary showed total billings to date of about \$102,500, credits of about \$29,500, and a balance owing of about \$73,000.

- [188] The \$90,000 cottage buyout amount was paid by a combination of Mr. Goodwin's remaining share of the sale proceeds of the family home (\$40,975) and funds received on March 7 from Mr. Findlay (\$49,025).
- [189] Trial preparations were underway in the first two weeks of March 2005. Mr. Findlay made a variety of documentary and other requests, including (1) whether Ms. Goodwin was claiming retroactive support from the separation date, as this might mean that the agreement between counsel concerning payment of household expenses through account deposits might have to be led in evidence at trial; (2) whether further medical evidence was being led as the reports disclosed thus far did not reveal a current inability to work; and (3) whether Ms. Goodwin was seeking child support, in which case the one dependent son would have to give evidence concerning his plans and budget. Mr. Findlay also indicated that he would seek to adduce evidence of suitable townhouse or condominium properties that were available for purchase amounts under \$200,000, apparently to argue that Ms. Goodwin had overextended herself financially in purchasing her townhouse.
- [190] Mr. Becker met with Ms. Goodwin on March 11, 2005. He told her that if they did not make the doctors available for cross-examination she could not pursue spousal support based on medical reasons. She authorized him to have the physicians attend at trial.
- [191] After being told that the medical reports were being relied upon, Mr. Findlay stated objections to these reports being admitted, and in any event he required the physicians to attend for cross-examination. Due to the outrage Ms. Goodwin had expressed earlier, Dr. Swift would only attend if Ms. Goodwin signed a document expressly consenting to her court attendance. Dr. Gopinath's office said they would have to get back to Mr. Becker as to whether he would attend.
- [192] Mr. Becker met Ms. Goodwin again on March 12, which was the Saturday before the Monday trial. Ms. Goodwin told him that she would now not allow Mr. Becker to make the physicians available for cross-examination at trial. She followed this up with a very indignant email. On the Sunday she wrote to advise that her son Ian would not come to trial because he preferred to speak to Mr. Becker by telephone. She sent Mr. Becker a statement Ian prepared, but Mr. Becker noted he could not use that statement at trial.
- [193] On Monday, March 14 Mr. Becker had some discussions with Mr. Findlay, prior to court, to the general effect of putting an arrangement in place that would be reviewed at some later time, perhaps a year, to see if Ms. Goodwin was working by then. Mr. Findlay expressed interest. With the permission of Slade J. they stood down to allow discussions to take place.
- [194] Discussions took place between counsel and the lawyers caucused with their respective clients. Mr. Becker said that both he and Mr. Findlay were candid with one another. He told Mr. Findlay that the argument that Ms. Goodwin was "intentionally unemployed" and capable of obtaining work immediately was a ridiculous argument, and that support of just \$500 per month for a fixed term would not work. For his part, Mr. Findlay said his client would never accept any notion that involved payment of support arrears, as Mr. Goodwin

felt his inheritance, which was reflected in the family assets, had been clawed away from him and that Ms. Goodwin had obtained more than 50% on the asset division. He emphasized the matter of Mr. Goodwin's post-separation funding of the account from which Ms. Goodwin had paid household expenses. Unless Ms. Goodwin dropped the idea of retroactive support, Mr. Findlay said he would proceed with the three-day trial.

- [195] Ms. Goodwin's responded that she also did not want a trial. Mr. Becker said that Ms. Goodwin's case was hampered because she likely had no admissible medical evidence and she did not want her son to have to attend to give evidence at trial. Mr. Becker told her she could expect Mr. Findlay to continue his aggressive position on intentional unemployment and Ms. Goodwin's financial mismanagement.
- [196] The parties came to an agreement. Both counsel made extensive submissions to the judge and Ms. Goodwin was given the opportunity to address the court. It is not entirely clear why the submissions were so extensive (the clerk's notes show the case went from 11:00 a.m. to 12:45 p.m. and from 2:10 p.m. to 2:25 p.m.), but it appears that an agreement was not reached until the lunch hour. Slade J. expressed his support for the settlement that was achieved.
- [197] The court ordered, by consent, that (1) the parties be divorced; (2) Mr. Goodwin pay \$1,250 per month in spousal support and \$450 per month for child support for Ian, both commencing April 1 and payable in instalments on the 1st and 15th of each month; (3) support would be reviewable at the instigation of either party in six months; (4) both parties were to file updated Form 89 financial statements; (5) there would be no costs to either party and (6) all other claims were dismissed.
- [198] Mr. Becker discussed the matter with Ms. Goodwin after court. She was very relieved and grateful for what had been accomplished and that a settlement had been achieved. Mr. Becker was also relieved and felt positive about the outcome. He felt they now could work towards refinancing Ms. Goodwin's mortgage.
- [199] On March 16 Ms. Goodwin sent Mr. Becker the first of a series of emails (11 in all, through to May 12) that, in general, expressed disappointment and a sense of defeat at the outcome, detailed her desperate financial position and sought a re-opening of matters already agreed to or decided. For example, on March 20 she wrote a long email raising many complaints, including that she did not get any retroactive spousal support and expressing her wish to get the case back before Crawford J. to deal with that issue.
- [200] From Mr. Becker's perspective, the remaining tasks were administrative: (1) refinancing Ms. Goodwin's townhouse; (2) equalizing the RRSPs; and (3) carrying out the pension division. As to the first task, Mr. Becker put Ms. Goodwin in touch with a mortgage broker acquaintance of his and he recommended to her that she obtain the largest mortgage commitment she could get. That commitment turned out to be one for \$140,000 from Prospera Credit Union. For the RRSP equalization Mr. Becker needed an account statement for Ms. Goodwin's RRSP, but he was unable to obtain it from her and ultimately had to

obtain it from the plan administrator. This delayed agreement on the equalization figure for the RRSPs until June 7, 2005.

[201] In two June 9, 2005 emails Ms. Goodwin told Mr. Becker that the vendor holding the mortgage on her townhouse had sent her a letter. She said:

Email #1

[The vendor] sent letter saying, I am in mortgage default and owe them money .. letter seems very nasty .received today. Please notify someone re Prospera or something . as I am very upset by this . They say I am in default of mortgage agreement . by May 31st deadline .

Email #2

[Vendor] want[s] interest now because I defaulted, what happened? I spoke to [vendor], they haven't got my mortgage pay out .. and are upset .This is the last thing I wanted to happen.

[Ellipses in original.]

[202] In fact, the letter from the vendor was not nasty in tone and did not mention default. It read:

The last time we talked, you mentioned that you were attempting to have the mortgage we hold paid off prior to the end of May. I understand that this has not yet been done. The mortgage we hold was due and payable on May 31, 2005, but we have received no paperwork in regards to the settlement of the mortgage.

At this time we also do not have any additional post-dated mortgage cheques. Please let us know what the status of the situation is. I will also need the June mortgage payment in the amount of \$1,200 ASAP as it was due on June 1, 2005.

If you wish to call and discuss this matter please do not hesitate to call me at [XXX XXXX].

[203] The payout of the vendor mortgage required that the mortgage documents be finalized and RRSPs liquidated after receiving the equalizing funds. Ms. Goodwin was asked to come to the office to sign the necessary RRSP forms once the equalization transfer had been made, but she resisted.

[204] On July 20 Ms. Goodwin emailed Mr. Becker to report that she had received another letter from the vendor, saying "they are angry and dealing to foreclose". In fact, the vendor's letter, which was dated July 14, said the following:

Over a month ago we sent you a letter requesting an update of the status of your refinancing. About two weeks ago, I received a request from our notary for a payout figure, and I was under the assumption that you were actively pursuing re-financing. I have been informed that you are now waiting for some RRSP money to be freed up prior to payout. If this is the case we have not been approached for our acceptance of the situation. As well we have not received any additional mortgage payments.

I have discussed the situation with [partner] and we will agree to extend the mortgage until September 30, 2005, assuming that all payments including the ones missed for June and July are made.

[205] Ms. Goodwin never told Mr. Becker that the mortgage payment deadline had been extended to September 30, 2005.

[206] On July 22 Mr. Becker sent Ms. Goodwin a reconciliation and payout statement, showing the litigation proceeds received and the funds needed to pay out the vendor mortgage. He noted that RRSPs of about \$55,000 had to be liquidated, with the liquidation to be done on a day to day basis to minimize withholding tax. The reconciliation included all of the remaining funds in trust. Mr. Becker said that right up until the time his retainer was terminated he was prepared to release all of the funds for the purposes of the refinancing despite the substantial amount Ms. Goodwin owed him on the outstanding legal bills.

[207] In several emails sent in late July and very early August Ms. Goodwin demanded to know where funds had gone and demanded that Mr. Becker submit a final bill. An email sent August 1, 2005 was particularly critical of Mr. Becker. He said that he did not understand some of the allegations, and he took the email to be a termination.

[208] Mr. Becker was away from the office in the second week of August. He sent Ms. Goodwin an email telling her that she had to liquidate RRSPs to obtain the cash necessary for the payout of the vendor mortgage. He left instructions with his legal assistant to prepare the final bill.

[209] On his return to the office Mr. Becker found a letter from the Law Society dated August 11, 2005, asking him to respond to a complaint Ms. Goodwin had made. Mr. Becker responded on September 12, 2005. In his response he said that he was only three or four days away from completing the refinancing, but it had been held up by Ms. Goodwin's refusal to execute the documents necessary for the RRSP redemptions. He acknowledged reluctance on his part to submit a final bill as he did not want to pay tax on a receivable that he knew would be some time being paid. He offered to complete the refinancing to bring that aspect to a close without the need for another lawyer to become familiar with that issue. Finally, he said he would be seeking legal advice on the matter of his unpaid bills. Mr. Becker retained Gordon Turriff for this aspect on October 3, 2005.

[210] In cross-examination, Mr. Becker said:

- a) he discussed fee discounts with Ms. Goodwin in the context of the disputes over valuation of the Point Roberts property and the "pots and pans" in order to encourage settlement on these issues;
- b) Ms. Goodwin began asking for a final bill after the trial before Slade J. in March 2005. He rendered his final bill on January 6, 2006;
- c) he knew Ms. Goodwin was fragile emotionally, and at a certain point he knew she was seeing a psychiatrist;
- d) after the parties agreed to resolve interim support through Mr. Goodwin's funding of a shared account, Ms. Goodwin complained to Mr. Becker that Mr. Goodwin was not depositing enough money;
- e) at one point he did a Divorcemate support calculation showing equal net disposable income for the parties at a spousal support level between \$1,500 and \$1,750 per month;
- f) Ms. Goodwin expressed to him suspicions that Mr. Goodwin was earning money "under the table", but letters from the purported employers refuted that. He discussed with Ms. Goodwin ways by which this evidence might be tested, including a formal examination of the witnesses following a chambers application, but told her that the monies involved were not enough to make this worthwhile. Ms. Goodwin agreed with that advice;
- g) although Ms. Goodwin told him on March 24, 2004 that she was not opening his letters, she was responding to matters raised in his correspondence and so he had difficulty believing it;
- h) he agreed that his letter to Mr. Findlay confirming that the house sale proceeds would remain in trust does not show that it was copied to Ms. Goodwin;
- i) in a letter to Ms. Goodwin of July 5, 2004 he said that the support arrangement would have to be "regularized" after the sale of the home, through some formal arrangement or court order;
- j) during a telephone call with Ms. Goodwin in July 2004 he noted the need to get a court order for support as soon as possible. However, the motion he served on July 15 was for an order allowing Ms. Goodwin access to the cottage;
- k) the cottage access motion was not brought to court because of the jurisdictional problem of the property being outside British Columbia;
- l) Ms. Goodwin would need either income or a division of capital in order to secure and maintain rental accommodation. He discussed with Ms. Goodwin the option of seeking an advance of \$10,000 and Ms. Goodwin agreed with that approach;
- m) on July 30, 2004 he provided her with a \$2,000 cheque out of his general account;
- n) a draft affidavit for a support application was prepared by August 3, 2004. The application itself was served August 5;

- o) he agreed he could have applied for support on an "interim interim" basis, on short leave, or ex parte;
- p) he was away from the office from August 9 to August 16. He served the notice of hearing three days after he returned to the office. Upon receiving opposing counsel's materials he concluded that a reply affidavit from Ms. Goodwin was necessary;
- q) approximately \$330,000 was in hand upon the closing of the family home sale on August 12. Opposing counsel proposed that these proceeds be paid out equally to the parties, but Mr. Becker felt that this would isolate the Point Roberts property and make an overall property settlement more difficult;
- r) in late August 2004 Ms. Goodwin showed him her car with her goods in it. He could not recall whether she said she was living in her car, but said that three accommodation options (the cottage, the relative and the hotel) had been discussed with her, and he told her that he would pay for the Ramada hotel;
- s) he was aware of the contents of the reports of Dr. Gopinath, dated September 9, 2004, and Dr. Swift, dated October 14, 2004 (but received November 5, 2004);
- t) he disagreed that he was instructed at this time to pursue property division on a 50-50 basis and maintained that Ms. Goodwin instructed him to press for reapportionment given her health uncertainties;
- u) Mr. Becker rejected the suggestion that the spousal support application brought one month before trial was a waste of time. He said it resulted in additional monies coming to Ms. Goodwin, and in any event it was brought at the Ms. Goodwin's insistence;
- v) toward the latter part of the retainer Ms. Goodwin expressed concerns about Mr. Goodwin moving to Bermuda and her wish that Mr. Becker freeze Mr. Goodwin's assets. A "freeze" was simply not available;
- w) although he said in direct examination that he showed her the restraining orders, he agreed that these orders were never entered;
- x) he disagreed that Ms. Goodwin's debts were not taken into account in the settlement, saying that the settlement was a global settlement that allocated family equity;
- y) he disagreed that support arrears were not discussed at the March 14 trial, saying that he told Ms. Goodwin that settlement would bring to an end her claim for spousal support arrears and the characterization of the \$100,000 advance; and
- z) he considered that she was giving up perhaps \$1,500 per month in retroactive support, possibly starting from the date the initial application was delivered but more likely from the date the family home was sold and ending at the trial date.

V. Other Witnesses

- [211] In late August 2005 Melody Martin met Ms. Goodwin following an introduction by the minister in her church, who asked Ms. Martin to see what she could do to help Ms. Goodwin. Although Ms. Goodwin was nicely turned out in her appearance, to Ms. Martin she seemed frail, "down" and "bleak". This began Ms. Martin's involvement as counsel for Ms. Goodwin on some of her issues.
- [212] Both parties engaged counsel in September 2005. Ms. Martin represented Ms. Goodwin on both the Law Society complaint and the fee dispute. Mr. Tretiak represented Ms. Goodwin on the family law case, a retainer that was arranged by Ms. Martin. Mr. Becker retained Mr. Turriff to represent him on fee issues.
- [213] Ms. Martin said that from October 2004 to January 2005 she was very concerned about Ms. Goodwin's emotional state. Ms. Goodwin threatened to kill herself every time Ms. Martin met with her. Ms. Martin was in touch with Ms. Goodwin virtually every day, and several times each week Ms. Goodwin would threaten to kill herself. Ms. Goodwin saw no way out of her problems, all of which were centred on her case. Her theme was that Mr. Becker had made her homeless. She expressed a fear of opposing counsel (Mr. Findlay), her ex-husband and Mr. Becker, and she later added Mr. Turriff to that list. Every setback or delay prompted expressions of hopelessness and suicide from Ms. Goodwin.
- [214] Prior to being informed of Mr. Turriff's involvement, Ms. Martin wrote letters to Mr. Becker dated September 15 and September 22, 2005. In the latter letter Ms. Martin: (1) demanded the release of all trust monies held; (2) requested details of all trust account credits and debits; (3) requested the immediate delivery of a final account; (4) requested copies of various documents and records; (5) discussed other issues, including a promised discount and the potential assertion of a limitation defence by Mr. Becker; and (5) indicated that the documents and accounting information were to be provided within seven days, failing which a court application would be made and special costs would be sought.
- [215] Ms. Martin and Mr. Turriff corresponded directly in early October on these issues. Ms. Martin had by this point taken out an appointment to review Mr. Becker's bills and was preparing a court application. She reiterated that special costs would be sought. Among other things Mr. Turriff said: (1) there was an issue as to whether Mr. Becker's bills were interim or final; (2) Mr. Becker was asserting a solicitor's lien over the proceeds remaining in trust; and (3) the practical issue was what security Ms. Goodwin could offer. He suggested a meeting between Mr. Tretiak, Ms. Martin and himself to discuss the matter generally but also to address the immediate problem of the refinancing.

- [216] In the affidavit Ms. Martin prepared, which Ms. Goodwin swore on October 6, 2005, Ms. Goodwin asserted that she had lived in her car for three weeks. Ms. Martin was unaware that this was untrue. She was also not aware that the townhouse vendor's letter sent mid-July 2005, described in the affidavit as a "default" letter, was in fact a letter in which the vendor extended the payment deadline.
- [217] Counsel met on October 7. An agreement was reached, at least in principle, to secure Mr. Becker's fees by way of a charging order that would be registered against Ms. Goodwin's property. The amount to be charged by way of this order was eventually agreed at \$60,000. Mr. Turriff said that the file would be released once the security was in place. He also told Ms. Martin and Mr. Tretiak that the amount of unbilled work-in-progress was about \$13,000.
- [218] Mr. Tretiak testified that Ms. Goodwin was apprehensive about the charging order but after he discussed it with her she agreed with it.
- [219] Mr. Becker sent Mr. Turriff the remaining monies in trust, about \$73,000.
- [220] An agreement was reached by which Mr. Becker was to provide the documents sought in Ms. Martin's court application by November 14, "without prejudice to his right to maintain his lien until [the consent charging order was returned]", and this resulted in the consent adjournment of a registrar's pre-hearing conference scheduled for November 1, 2005. There was an element of confusion on November 14 as Ms. Martin had expected the documents then, but Mr. Turriff indicated that he had meant that the documents would be sent only if the consent charging order had been received.
- [221] On November 1, 2005 Ms. Martin reported to Ms. Goodwin. Ms. Martin said: (1) the charging order enabled Ms. Goodwin to access funds in trust without waiting for the completion of the legal bill review; (2) this solution was a "winning situation"; (3) the question of reasonableness of Mr. Becker's bills was a matter for consideration following full review of the documents, and ultimately was for the court to determine; (4) there was nothing Mr. Becker could have done to prevent Mr. Goodwin from moving to Bermuda. As to the latter point, Ms. Martin testified that Ms. Goodwin had blamed Mr. Becker for having allowed this to happen.
- [222] A further extension of the vendor's mortgage was arranged, with the deadline now being November 30, 2005. The deadline was later extended again to December 8, 2005.
- [223] Ultimately, Ms. Martin sent the signed consent charging order to Mr. Turriff on November 23, 2005, and he sent it for entry on a rush basis on November 30, 2005. It was entered that day.
- [224] There was a considerable dialogue between counsel concerning the wording of the undertaking that had to be given by the commercial solicitor in Mr. Tretiak's office, which arguably turned on the nature of the refinancing. There was also a lot of discussion of the financing itself. The amount required to pay out the vendor mortgage was about \$247,000 and Ms. Goodwin had approval from Prospera Credit Union for a mortgage of \$140,000. At

some point Ms. Goodwin's solicitors contemplated an RRSP-funded mortgage, but this idea proved unworkable. A higher mortgage amount was proposed, around \$200,000, in order to obviate the need for Ms. Goodwin to cash in her RRSPs, with the withholding tax consequences that redemption would entail.

- [225] Ms. Goodwin was by this point working, at least on a temporary basis, and perhaps because of this Mr. Tretiak was able to obtain a commitment for her from Prospera for a \$187,000 mortgage. The commitment letter, however, required that the mortgage be the only charge on title, and this requirement created a problem because the charging order was to be registered subsequently to the mortgage. Prospera was asked for permission to register the charging order, but on December 1, 2005 the credit union declined. A scramble ensued to secure alternative financing, which was obtained on December 12, but the whole process pushed the completion date back to January 6, 2006.
- [226] Ms. Goodwin was worried, even upset, about the payments associated with the higher mortgage. Ms. Martin was concerned that Ms. Goodwin could not afford the payments. Ms. Goodwin also took the loss of the financing commitment very badly. Ms. Martin drove Ms. Goodwin home, and while travelling in the car Ms. Goodwin said "this is the last straw, I cannot live", then she gripped the door as if to jump out, saying "you can't keep me captive". Ms. Martin drove to the church, where the minister calmed Ms. Goodwin down.
- [227] On December 19, 2005 Mr. Turriff's firm sent the agreed sum of \$60,000 to Mr. Tretiak's conveyancing solicitor.
- [228] On November 29, 2005 Ms. Goodwin resigned her employment. She has not looked for work since. She said it was "beyond me".
- [229] The refinancing completed on January 6, 2006.
- [230] Also on January 6, 2006 Mr. Turriff provided Mr. Becker's file materials (six boxes) to Ms. Martin. Mr. Becker sent Mr. Turriff his final bill to Ms. Goodwin on that same day, but it was not sent to Ms. Martin until January 24 because of Mr. Turriff's court commitments.
- [231] A pre-hearing conference was held before Registrar Sainty on January 10, 2006. She determined that the issue of interim vs. final bills should be heard first over two days, with the substantive review to take place subsequently in a four-day hearing. She also directed that Mr. Becker produce copies of cheques.
- [232] In late February and early March 2006 counsel fenced over document disclosure. Ms. Martin complained that file materials were missing and Mr. Turriff responded that he had earlier indicated that Mr. Becker would retain "what he owns". Counsel eventually worked out these issues, but a pre-hearing conference date of March 13 and substantive hearing date of March 15 were adjourned by consent. On March 8 and 9, 2006 more boxes of documents were sent to Ms. Martin.

- [233] Mr. Tretiak retained accountants to analyse Mr. Becker's billings. Their findings were set out in a memorandum dated April 7, 2006. The accountants concluded that the total amount billed was \$86,337.35, comprised of fees of \$64,070.75 and disbursements of \$12,687.48. The disbursements included funds that had been paid to Ms. Goodwin from Mr. Becker's general account.
- [234] A settlement meeting was held on April 12, 2006. Mr. Tretiak was not in a position to propose a number he thought reasonable for Mr. Becker's fees and, perhaps partly for that reason, no settlement was achieved.
- [235] Ms. Martin "bowed out" of the case at about this point, having devoted perhaps 300 hours in pro bono time to Ms. Goodwin's case. On April 23, 2006 Ms. Goodwin sent Ms. Martin an email in which she described the consent charging order as "malicious and unnecessary". She also said:

I also want to make the point that this new mortgage, caused by his charging order, has impossible monthly payments and thus, is a huge hardship and effective way of causing me to lose my home . He failed on the mortgage completion that he arranged . and then added to that failure with the charging order which effectively terminated the Prospera mortgage and made securing another almost impossible ..

[Ellipses in original.]

- [236] Around December 2006 an associate of Mr. Tretiak's, John Nalleweg, stepped in to assist as Ms. Martin reduced her involvement. His focus was on the legal bill review, but he also dealt with some family issues and was peripherally involved in the townhouse refinancing.
- [237] Mr. Nalleweg's impression of Ms. Goodwin was that she was "extremely fragile". She was teary, hesitant and very fearful, especially concerning her house. Her house was a "touchstone" for her and she was very afraid to lose it. For his part, Mr. Nalleweg felt that Ms. Goodwin "had more house than she could afford" and that she should sell it; however, this suggestion was a "non-starter" for her.
- [238] Mr. Nalleweg felt that the fee review was the most important issue facing Ms. Goodwin. Negotiations were protracted and difficult. Mr. Nalleweg raised many points in Ms. Goodwin's favour, including that Ms. Goodwin was living in her car at one point and that the consent order from trial did not mention pension division yet corollary relief was dismissed. Mr. Nalleweg acknowledged that the pension was satisfactorily dealt with later. In cross-examination, Mr. Nalleweg agreed that pension division had been dealt with in the property division settlement agreement, and he was aware that the agreement provided a sufficient basis for the pension division that was ultimately carried out.
- [239] Mr. Nalleweg also said that Mr. Becker's accounting records left it impossible to determine what monies had come in and what monies had gone out.

- [240] At one point (in or around July 2006) Mr. Turriff issued a Notice of Constitutional Question which raised an issue over the jurisdiction of the registrar. This additional issue further complicated the scheduling of the review. In September 2007 Mr. Turriff noted the apparent prospect of a negligence action by Ms. Goodwin against Mr. Becker, and indicated that he would be applying for a stay of the fee review pending the outcome of that action.
- [241] As noted earlier, Mr. Nalleweg dealt with some aspects of the support issues. In January 2007 Mr. Findlay wrote to inquire about Ms. Goodwin's ability to work and the status of son Ian. In his testimony, Mr. Nalleweg recalled that Mr. Goodwin would stop paying support, then he would pay, and he would then demand proof that Ian was going to school. Through Mr. Findlay, Mr. Goodwin continued to take the position that Ms. Goodwin should be working. In replying to Mr. Findlay, Mr. Nalleweg was blunt in his description of Ms. Goodwin's level of functioning, saying "she is a basket case".
- [242] The fee dispute settled in September 2007. Mr. Becker agreed to pay to Ms. Goodwin the remaining monies in trust (\$13,500), plus \$20,000 as a refund of fees paid, plus a further \$3,000 for costs. The charging order was removed from the title of Ms. Goodwin's townhouse.
- [243] Mr. Tretiak pursued a number of matrimonial issues. He made inquiries about enforcing the support order in Bermuda, but concluded it would be too expensive. He also looked into enforcement against the Point Roberts property, but he was told any judgment that might be registered would be cancelled if the arrears were paid. There was also the division of Mr. Goodwin's Domtar pension. Normally, persons in Ms. Goodwin's position send a document called a Form 1 to the pension fund, but this had not been done. A Form 1 was completed and sent, which prevented Mr. Goodwin from accessing his full pension when eligible to do so (at age 60, which occurred on April 28, 2009). Much later (April 30, 2009), Mr. Tretiak obtained an order restraining Mr. Goodwin's access to his pension because of his failure to fulfill his support obligations, but this order was later set aside. The dispute over arrears of support was eventually settled in or around March 2010 by a lump-sum payment from Mr. Goodwin of \$50,000.
- [244] Mr. Tretiak sent Ms. Goodwin a number of legal bills for the work he did and for work done by associates, but he conceded that his billings included work done on the legal bill review, the Law Society complaint and the present negligence action.

VI. Medical Witnesses

(a) Dr. Gopinath

- [245] Dr. Hirekatur Gopinath, the plaintiff's psychiatrist, prepared reports dated November 16, 2009 and October 7, 2010. In his reports he said that Ms. Goodwin was under his care from October 1, 2003 to March 14, 2006.

- [246] Dr. Gopinath said that in October 2003 Ms. Goodwin presented with features of major depression precipitated by loss of a "prestigious job", a job from which she had been forced to resign in order to care for her aged mother. He said she also had difficulties coping with her alcoholic and abusive husband and her mother's death in January 2003. Thereafter, Ms. Goodwin became increasingly depressed and had bouts of intense suicidal ideation. Dr. Gopinath treated her with antidepressants, though these were problematic as one medication exacerbated her essential tremor and she could not tolerate several other medications prescribed for her.
- [247] In his first report Dr. Gopinath said Ms. Goodwin was admitted to hospital in September 2004 due to an escalation of her suicide risk. He noted that she had quit her job the previous month (though he corrected this in his second report) due to an escalation of both physical and psychological problems, and said that the major reason for the escalation in her suicidal ideation was "her husband's refusal to settle the finances". She was "constantly envisioning that she would become a virtual destitute due to non-settlement and also her inability to be employable due to her disability". By February 2005 she developed symptoms of post-traumatic stress disorder (PTSD). Dr. Gopinath diagnosed her with recurrent major depression, which was related to multiple adverse life stressors, with the later addition of PTSD "with continuous emotional, verbal and behavioural harassment by her husband and due to the struggles she had in procuring funds to buy the town home in Abbotsford". He considered that she would be vulnerable to future problems due to the trauma.
- [248] In his October 7, 2010 report Dr. Gopinath reviewed Ms. Goodwin's more recent history, as reported by her, since he had not seen her since March 2006. He noted that her psychological difficulties had continued. He said:

She reports she is bereft of her self-esteem and dignity and self-respect having to obtain help from the system and her good neighbours for day to day living including food and living expenses which she attributes to currently failure to obtain her share of funds and in the trust. She still has florid memories of her horrid days of having to temporarily live with her friends from day to day and also living in a car being homeless in September 2004 with severe fears of further insecurity looming in the future.

- [249] Dr. Gopinath concluded that Ms. Goodwin continued to be disabled and unfit to hold any meaningful occupation due to persistent depression, anxiety, PTSD and tremors.
- [250] In his testimony, Dr. Gopinath gave a mixed response when asked if Ms. Goodwin had PTSD prior to his involvement; initially he said "no" but he then said words to the following effect:

In 2003 she developed it in relation to her marital problems, which caused anxiety and fears or threat to her life, so she already had PTSD when I saw her.

- [251] In cross-examination, he said that as of October 2003 Ms. Goodwin already had PTSD, depression, anxiety disorder and panic attacks. When asked what the "extreme traumatic stressor" was that she had been exposed to - an essential feature of PTSD - Dr. Gopinath said

constant marital problems, her husband's excessive drinking and his threats of physical harm to her. He agreed he had noted in his first report that her daughter had severe bipolar disorder and had been "lost to drugs and alcohol" and this had caused Ms. Goodwin worry, anxiety and panic attacks, although this had not been as acutely distressing because the two were estranged.

[252] As to his diagnosis of generalized anxiety disorder, Dr. Gopinath agreed that Ms. Goodwin had this disorder "probably since March 2003 or slightly before".

[253] Dr. Gopinath said that when he saw Ms. Goodwin in 2010 her PTSD was reduced, though lingering, due to ongoing stressors, but in cross-examination he noted she had suffered a fresh episode of depression in November 2005.

[254] In re-examination Dr. Gopinath said the theme of severe financial problems continued throughout the time he treated Ms. Goodwin and that the "lien on her funds" was causing her stress.

(b) Dr. Michael Newton

[255] Dr. Newton has been Ms. Goodwin's family doctor since April 2005. His report is dated October 6, 2010.

[256] Dr. Newton opined that Ms. Goodwin was presently unable to work. He provided a diagnosis of PTSD, long-standing central tremor, generalized anxiety disorder and chronic depression. He conceded, however, that these diagnoses were derived from Dr. Gopinath's reports and records. Dr. Newton concluded that the development of PTSD was attributable to "her relationship with her previous attorney and her inability to resolve the issues", but his opinion was again derived from the psychiatrist's reports and based on what I would describe as a somewhat skewed version of events obtained from both from Ms. Goodwin and from counsel's instructing letter. He deferred to Dr. Gopinath as to the date on which Ms. Goodwin's PTSD began.

[257] In cross-examination, Dr. Newton acknowledged that he was not aware Ms. Goodwin had worked from January to June 2004, nor that she had worked in fall 2005. He had also assumed that her admission to a psychiatric facility in September 2004 occurred because Ms. Goodwin was homeless after the sale of her house, and he was unaware that she had been approved for admission before it sold. He acknowledged that he has not sent Ms. Goodwin for a psychiatric referral since May 2006 and that he would have done so had he felt there was a need.

- [258] Dr. Newton agreed that in January 2009 Ms. Goodwin's tremor was found to have deteriorated. Ms. Goodwin suffered a neck injury in a car accident in December 2006 and was injured again in a snowmobile incident in January 2010. By February 2010 he noted she had developed chronic back pain; by March 2010 she was found to have degenerative disc disease and arthrosis. Dr. Newton conceded that he did not consider any of these in assessing Ms. Goodwin's ability to work full-time.
- (c) Dr. Anthony Sehon
- [259] Dr. Sehon is a psychiatrist who was called as an expert witness on behalf of the defence. He saw Ms. Goodwin for a medical-legal examination on November 5, 2010. He prepared reports dated November 12, 2010 and December 23, 2010.
- [260] In his November 12, 2010 report, Dr. Sehon concluded that Ms. Goodwin presently suffered from a major depressive disorder. He doubted a diagnosis of PTSD, but said she had features of "anxiety disorder - not otherwise specified". He said that causation was a difficult question. Ms. Goodwin had a pre-existing psychiatric illness going back many years, she was vulnerable to relapse and "the multiple stressors may have played a contributory role; it is difficult to identify one stressor and determine it was primarily responsible for her current mood state".
- [261] In his first report Dr. Sehon also said: (1) based on his document review, Ms. Goodwin's marriage breakup was a critical issue in terms of her mental state; (2) the matrimonial lawsuit also played a significant role, although he noted that, based on her previous history, she was prone to relapse of her depression when exposed to additional stress; (3) it was overly simplistic to suggest that the litigation issue with Mr. Becker was the sole causative factor of her depression; (4) from a psychological perspective she has been vulnerable to separation and abandonment issues; (5) while she has presented with PTSD-like symptoms in the past, these symptoms most likely reflect the issues relating to her divorce rather than the subsequent litigation with Mr. Becker; and (6) she should be reassessed by a psychiatrist as she requires specialist care.
- [262] Dr. Sehon found Ms. Goodwin to be a poor historian, and said she was circumstantial and tangential in the interview. In cross-examination he added that she focused on how her problems were all related to dealings with her lawyer. When he tried to question her about other stressors in her life she always brought the subject back to problems with her lawyer.
- [263] Dr. Sehon's second report was a critique of Dr. Newton's report. He disagreed with the diagnoses of PTSD and generalized anxiety disorder, stating that in the case of the former Ms. Goodwin did not show sufficient symptoms to meet the necessary diagnostic criteria for PTSD; in the latter, Ms. Goodwin's score on the relevant assessment test was "insignificant" (a score of 3 versus a score of at least 14). Dr. Sehon also noted that when he examined Ms. Goodwin she did not admit to any symptoms of generalized anxiety disorder.

[264] In stating that he did not consider that Ms. Goodwin met the diagnostic criteria for PTSD, Dr. Sehon said:

Please note that Criterion A is the following: The person has been exposed to a traumatic event in which both of the following have been present. 1. The person has experienced, witnessed or been confronted with an event or events that involve actual threatened death or serious injury or a threat to the physical integrity of oneself or others. 2. The person's response involved intense fear, helplessness or horror. In addition I do not believe that Ms. Goodwin meets diagnostic threshold for Criterion B, Criterion C or Criterion D, E, or F.

PTSD is a term frequently overused and implies the development of characteristic symptoms following exposure to an extremely traumatic stressor where direct personal experience involves actual or threatened death or serious injury. The person's response must involve intense fear, helplessness or horror which Ms. Goodwin did not describe during [my examination].

In summary, I emphasize that litigation is stressful for most individuals; in an individual who has a pre-existing history of depressive illness it can be overwhelming. This does not mean however that in these individuals that the stress of difficult litigation is severe enough to warrant a DSM IV TR diagnosis of PTSD.

VII. Expert Evidence - Law

[265] The plaintiff submitted the expert report of Karen Nordlinger, Q.C., a family law specialist. Ms. Nordlinger did not give evidence at trial other than through her report as she was not required for the purpose of cross-examination.

[266] In her report of November 10, 2010 Ms. Nordlinger provided her opinion concerning steps that would or should be taken by a reasonably competent family lawyer ("RCFL") during the relevant time frame. Given that she was asked her opinion on 32 aspects of the underlying family law dispute, I will summarize only some of them, as follows:

- a) asked whether a RCFL would have taken steps to apply for support well in advance of the sale of the family home, Ms. Nordlinger said that a RCFL would not necessarily have tied an application for interim support to the sale of the family home. The application would made based on instructions based on the client's need at any given time;
- b) Mr. Becker's failure to apply for an interim support order or order on short leave in August 2004 did not fall below the standard of a RCFL, nor did his decision to adjourn the application. The application was delayed because of the late receipt of the responding affidavit and Form 89 financial statement from Mr. Findlay and as a result of the hospitalization of Ms. Goodwin in September;
- c) the family debt should have been dealt with when property division was settled. Usually this is expressed in terms of who is to be responsible for the debt, or the property division is adjusted to account for the debt;

- d) a RCFL would have taken steps to have RRSPs rolled over into the client's name following settlement of the property issues, to address the repayment of the vendor's mortgage by May 31, 2005. Mr. Becker fell below the standards of a RCFL in failing to equalize the RRSPs given the client's need to refinance the vendor's mortgage by that date;
- e) a final account ought to have been produced as soon as possible after the client made the request, but if work was ongoing it might not be "final";
- f) the pension forms (Forms 1 and 2) should have been provided to the employer upon the signing of minutes of settlement or entry of a court order;
- g) a RCFL would have advised the client that Bermuda was not a reciprocating state and advised her to obtain security for support or lump sum support, but such orders are not easily granted;
- h) as to the failure to seek retroactive spousal support at the time the matter was settled before Slade J., the client should have been advised that this issue remained outstanding.

VIII. Positions of the Parties

(a) The Plaintiff

[267] Ms. Goodwin claims against Mr. Becker in negligence and breach of contract. Specifically, Ms. Goodwin says that Mr. Becker was negligent, and therefore also in breach of contract, in the following ways:

- a) he failed to apply for spousal support and child support, including retroactive support, in a timely fashion;
- b) he failed to secure spousal and child support after he knew Mr. Goodwin intended to leave the jurisdiction, and he failed to secure Ms. Goodwin's interest in Mr. Goodwin's pension;
- c) he failed to ensure that Ms. Goodwin's debts were accounted for in the property division;
- d) at the hearing before Slade J. he failed to address the "uncharacterized" sum of \$100,000 released by order of Crawford J. or to address Ms. Goodwin's claim for retroactive support;
- e) he failed to inform Ms. Goodwin that she would not be able to access the house sale proceeds when they were paid, and he failed to inform Ms. Goodwin that the vendor's mortgage had not been discharged on May 31, 2005;
- f) he failed to discharge the vendor's mortgage on May 31, 2005;
- g) he failed to carry out the RRSP equalization rollover in time to meet the payment date for the vendor's mortgage;
- h) he failed to render an account or accounts when Ms. Goodwin asked for one;
- i) he was negligent in charging excessive fees;

- j) he failed to maintain proper accounting records on her file; and
- k) he failed to deliver up his files to Ms. Goodwin's new solicitors.

[268] Ms. Goodwin submits that as a result of Mr. Becker's negligence, she became homeless and disabled. Had he obtained a support order or the release of monies in a timely way Ms. Goodwin would not have been rendered homeless and her psychological condition would not have deteriorated. His later delay in discharging the vendor's mortgage and his filing a charging order against her property simply made matters worse because they caused Ms. Goodwin to fear homelessness again.

(b) The Defendants

[269] Mr. Becker submitted that:

- (a) concerning interim support, he took the steps that a reasonably competent family lawyer would have taken;
- (b) retroactive support and the debts of the parties were subsumed in an overall settlement between the parties, and special considerations and considerable deference apply in circumstances where it is alleged that a lawyer has been negligent in advising settlement;
- (c) he was not negligent in not taking steps to secure future support payments or the husband's Domtar pension;
- (d) the delay in refinancing was due to Ms. Goodwin's failure to submit requested documents and to liquidate her RRSPs; later, she did not take the steps necessary for the financing before the retainer was terminated. In any event, the townhouse was never in jeopardy as the vendor was reasonable and extended the payment deadline of its own accord, and she suffered no damages because the vendor's mortgage had a lower interest rate than the later mortgages. Any difficulties and stress she encountered in subsequently refinancing her townhouse stemmed Ms. Goodwin being over-leveraged and over-housed in a three-bedroom townhouse;
- (e) as to the charging order, he cannot be found liable for a charging order entered into with the consent of Ms. Goodwin, which replaced a solicitor's lien that he was legally entitled to assert;
- (f) his fees were reasonable in the circumstances, and Ms. Goodwin was aware of the magnitude of his billings as he had reported these to her at various times;
- (g) stress or anxiety is not compensable unless it rises to the level of a recognized psychiatric injury;
- (h) Ms. Goodwin had many psychiatric problems that either pre-dated or were independent of her dealings with Mr. Becker, and therefore she has not proven causation; and
- (i) Ms. Goodwin has not made out a case for the special damages she has claimed.

IX. Discussion

(a) Credibility

- [270] Because some of the findings in this case turn on credibility it is necessary that I comment on the credibility of the two central witnesses in this case. In assessing credibility I am very mindful that Ms. Goodwin has certain disadvantages attributable to her psychological difficulties and for this reason she may not have compared well to Mr. Becker, who has the advantages of a professional background and training as well as experience with the litigation process. However, I must state that even after giving Ms. Goodwin every allowance for testimonial difficulties that may stem from her various issues, I found her to be an unreliable witness and, in particular, a very poor historian.
- [271] By her own admission, Ms. Goodwin's memory is weak and unreliable. At various times she said words to the effect, "my memory is not always right on", "my memory [problem] is part of my damage", and "it's hard to answer because of my memory issues". Clearly, she had difficulty recalling events. Among other memory lapses, she could not recall the initial JCC at all, she said "I don't remember much" of the time following her hospital admission, and she had little recall of the hearing before Slade J. on March 14, 2005.
- [272] I appreciate that Ms. Goodwin maintains that her memory difficulties are part of the damage she claims was caused by Mr. Becker, but rather than simply conceding she could not remember events she resorted to obvious reconstruction, although often in the guise of actual recall. Her testimony was replete with such phrases as "I must have", "he would have", "I don't think I would have", "I think I was", "that's my best guess", "I may have told her" and "I'm trying to understand what my thinking would have been at the time". It was also apparent that in testifying about events that she could not remember or remember very well, Ms. Goodwin almost invariably reconstructed events in her favour and against Mr. Becker, and often in contradiction to contemporaneous documents or common sense. There were many instances of this; one example is her evidence that she thought she would not have given Mr. Becker instructions to make the January 10, 2005 offer of settlement ("I don't think I would have"), which is very difficult to accept; another example is her answer to the question, "Were you told by Mr. Becker that he had received \$90,000 for your interest in the cottage?", where she said, "I think I'm responding that I wasn't". Again, leaving aside her obvious reconstruction, the substantive answer is very hard to believe.
- [273] I found it telling that when it suited her, she characterized herself as a knowledgeable businesswoman who could assess the merits of an important property transaction, including signing additional contract documents for the property sale both during and after her hospitalization in September-October 2004, but when it did not, as with the Acknowledgement she signed later in October 2004, she said she was incapable of reading documents and that Mr. Becker "always knew I couldn't read".

- [274] Ms. Goodwin minimized other difficulties and sources of stress in her life, which were many, as well as difficulties that pre-dated her dealings with Mr. Becker, and she focused to an excessive and inappropriate extent, almost to an obsessive extent, on harm said to have been caused to her by Mr. Becker. Again, there were many examples of this. Ms. Goodwin had a lot of difficulties in her life, including the January 2003 death of her mother, the collapse of her marriage, an allegedly alcoholic and abusive husband with whom she continued to live post-separation, a very troubled daughter who was diagnosed with cancer, lifestyle issues with one of her sons, significant health problems including increasing problems with her disabling tremors, work problems serious enough to prompt stress leave, loss of employment, anger with her husband for his perceived easy life with his girlfriend, very hard-fought litigation (including an affidavit from her husband that so affected her that she attempted suicide), and financial problems, including financial problems of her own making in committing to a townhouse purchase that was quite obviously beyond her. Yet in her testimony Ms. Goodwin portrayed these various stressors as nothing compared to the damage caused by Mr. Becker.
- [275] Ms. Goodwin's evidence concerning the charging order was also problematic. This was an order consented to by Ms. Goodwin following the recommendation of her lawyer, Ms. Martin (who told Ms. Goodwin the charging order was a "winning situation"), yet Ms. Goodwin said "I used to wake up terrified that the lien was on my house" and she felt a sense of oppression because "he [Mr. Becker] owns my house". She went so far as to cancel a "house blessing" because, as she said, "it's not my house".
- [276] On other occasions Ms. Goodwin clearly exaggerated. Some examples are as follows: (1) she minimized Mr. Becker's participation in the January 6, 2005 JCC to the point of virtual non-involvement; (2) she said in a 2010 affidavit that she had only recently discovered Mr. Goodwin's blog, yet she conceded in cross-examination that she had discovered the blog in September 2005; (3) in a 2005 affidavit she swore she had lived in her car for three weeks (an assertion that also appeared in correspondence sent to the Law Society), and she told Dr. Swift she lived in her car for four weeks, yet at trial she conceded it was just three days; and (4) at certain points she spoke of the townhouse vendor threatening default proceedings or foreclosure, yet the vendor never made those threats.
- [277] In short, the numerous and serious problems with Ms. Goodwin's credibility make it difficult to have any confidence in her testimony.
- [278] By contrast, I found that Mr. Becker gave his evidence in a measured and relatively balanced way that was consistent with contemporaneous documents. I found his evidence reliable.

[279] As I have said, it is probably to be expected that a lawyer, particularly a lawyer with litigation experience, will have knowledge and skills that a layperson may not and so his presentation in court may be more appealing or outwardly believable, but Ms. Goodwin's testimonial difficulties were so fundamental that even after making every allowance in her favour I have concluded that where there is a conflict in the evidence between Ms. Goodwin and Mr. Becker, the evidence of Mr. Becker is to be preferred.

(b) Liability

[280] I will discuss the individual complaints of negligence as addressed by the parties in their submissions.

i. The Support Application

[281] Ms. Goodwin alleges that Mr. Becker was negligent and in breach of contract in failing to bring an application for both spousal and child support in a timely fashion and before the family home was sold, which caused Ms. Goodwin to become homeless. This allegation is probably the central claim in Ms. Goodwin's case, as the theme of homelessness permeated her testimony, it was her stated primary fear from that point onward, and her period of homelessness is said to have been a cause of her PTSD.

[282] Ms. Goodwin also submits that Mr. Becker was negligent in support application delays from August 2004 to the trial of March 14, 2005.

[283] As with most of the issues before the Court in this case, context and chronology are important. Mr. Becker had prepared an interim support application back in May 2003 but Ms. Goodwin instructed him not to proceed because the parties came to an acceptable arrangement by which Mr. Goodwin funded an account for household expenses. This arrangement was in place for some time. On March 4, 2004 Ms. Goodwin told Mr. Becker that he was to leave the issue of support until the sale of the matrimonial home. As late as April 16, 2004 Ms. Goodwin saw no need for a court application. Mr. Becker confirmed a conversation of that date in a letter dated April 19, 2004:

Further to our telephone conversation of April 16, 2004, we confirm as follows:

3. Your job is going reasonably well. You will be off work during the Summer from July 16th through September 16th, 2004. We reviewed the option of a Court Application for a formal award of interim spousal support. You feel that you will be able to work with your husband in order to have him top up the household accounts during your period of no income. Funding for the Fall term for your institution remains a question.

[284] On June 8, 2004 Mr. Becker wrote to Mr. Findlay asking for confirmation that Mr. Goodwin would continue to fund the joint account for Ms. Goodwin without the need for a court application for interim support and Mr. Findlay gave that confirmation that same day.

- [285] Certainly up to that point I cannot see any basis on which Mr. Becker can be said to have been negligent for not having brought an application for interim support.
- [286] On July 8, 2004 Ms. Goodwin told Mr. Becker that she needed a court order for support. This discussion took place as part of a broader discussion of various matters, including Ms. Goodwin's break-in at the cottage and her request that Mr. Becker take steps to allow her to reside in the cottage. On July 14, 2004 Mr. Becker updated Ms. Goodwin's financial statement and prepared a support application. On July 20 Mr. Becker wrote to Mr. Findlay to request that \$10,000 be paid from the house sale proceeds to meet Ms. Goodwin's initial rental obligations and moving expenses. The wording suggests that Mr. Becker was proposing that each party get a \$10,000 advance. Mr. Findlay rejected that proposal. On July 30 Mr. Becker gave Ms. Goodwin a cheque for \$2,000, drawn on his own account.
- [287] During this time counsel continued to negotiate an overall settlement of at least the property issues. Ms. Goodwin's proposal was for a division of property that favoured her to some extent beyond a straight, equal division.
- [288] On August 5, 2004 Mr. Becker delivered Ms. Goodwin's August 3, 2004 affidavit to opposing counsel as the basis of an interim support application. He requested a hearing date during the week of August 16. In her affidavit Ms. Goodwin said, in part:
4. At the present time I am without any income. I had been working as an instructor for a private college until the end of June, 2004 when the college term ended for the year. While I hope to be re-employed by the college in September, 2004 I have no guarantee that I will be called back into work.
 7. At the present time I have no place to live after the sale of the family home. It is my intention to relocate at least on a temporary basis [to] the family home in Point Roberts, U.S.A.
- [289] Mr. Becker was out of town from August 9 to 16, 2004. On his return he set the application for hearing on August 26, 2004. On August 18 Mr. Becker left a telephone message with Ms. Goodwin, asking her to confirm that he should request \$1,500 per month as interim support. Ms. Goodwin apparently did not respond to this message. On August 23 Mr. Findlay wrote to Mr. Becker, saying that there was no evidence about Ms. Goodwin's present financial needs and no indication of the amount of support being sought. On August 24 Mr. Findlay served response materials that Mr. Becker felt had to be responded to by Ms. Goodwin. Mr. Becker tried to contact Ms. Goodwin both at her cell phone number and the house where she was staying, but he was not successful. Consequently, Mr. Becker did not file the materials necessary to secure the chambers date.
- [290] In the evening of August 25 Ms. Goodwin contacted Mr. Becker. She told him she was not well enough to seek employment at that time and expected to be admitted for stress at Ridge Meadows Hospital. She also mentioned to Mr. Becker that she would stay at a hotel or the cottage. She agreed that Mr. Becker could obtain a medical report from Dr. Gopinath to use as further evidence for the support application.

[291] Ms. Goodwin swore a further affidavit on August 26, 2004, largely responding to Mr. Goodwin's affidavit. In her affidavit she said she did not have confirmation of employment for September 2004 but remained hopeful that her employer would be calling her back to work toward the end of September or October. She also said:

5. After the sale of the family home I was able to stay with friends and house sit for a friend until August 26, 2004 after which time I have no place to go nor any funds with which to relocate. I may well have to relocate to the family cottage in Point Roberts.

[292] On September 3, 2004 Ms. Goodwin admitted herself to hospital. This delayed the interim support application because updated evidence was needed concerning Ms. Goodwin's ability to work. On September 9 Dr. Gopinath provided a brief note with an attached consultation report. These materials were delivered to Mr. Findlay and a new chambers date was set for September 24. That date was also adjourned; Ms. Goodwin wished to attend and said her doctors recommended that she attend, but on September 22 Ms. Goodwin told Mr. Becker that she could not attend. They discussed adjourning the application. The application was then put over to October 4, 2004, when the application was heard and decided by Crawford J.

[293] The opinion evidence of Ms. Goodwin's own standard of care expert, Ms. Nordlinger, does not support the claim that Mr. Becker was negligent in failing to bring on a support application earlier than October 4, 2004. Ms. Nordlinger said:

It appears that Mr. Becker did bring the application for interim support shortly after the closing date of the sale of the matrimonial home in August, 2004, after receiving instructions in June and July. The hearing of the matter was delayed as the result of the late receipt of a Form 89 from Mr. Findlay, and as a result of the hospitalization of the client in September. I do not believe that Mr. Becker's failure to apply for an interim Order or an Order on a short leave basis in these circumstances fell below the standards of a reasonably competent family lawyer. With regard to the short leave question, this would have been appropriate if Mr. Becker felt that the application was urgent and he was instructed to proceed with a short leave application. However, this was an evolving situation [and] a retroactive Order would have remedied any injustice resulting from a delay.

[294] Ms. Goodwin addresses this difficulty in two ways. First, she says that "this is true from an end result point of view in theory but does nothing to alleviate Ms. Goodwin's serious lack of cash flow from August 12, 2004 to March 14, 2005". In effect, she challenges her own expert's opinion. Ms. Goodwin also says that ultimately she did not receive retroactive support so interim support was never addressed. Second, Ms. Goodwin submits that the Court has the jurisdiction to make its own findings of negligence on this issue.

[295] As to the first point, I am not satisfied that the stated time period is the relevant one in the circumstances, nor that nothing was done to address Ms. Goodwin's cash-flow problems. On October 4, 2004 the Court ordered a \$100,000 distribution to Ms. Goodwin, a sum the Court described as "uncharacterized" (that is, not defined as support or as part of property

division). The first \$50,000 of those funds was disbursed to Ms. Goodwin within a week or so of the court hearing. By October 29 Ms. Goodwin had received \$75,000. Although she had plenty of money by then, it was already largely committed due to her impetuous, indeed foolhardy, purchase of the Abbotsford townhouse. The evidence also indicates that in the fall of 2004 Ms. Goodwin spent substantial sums (\$8,000) to renovate or finish an unfinished portion of her townhouse. The townhouse purchase had been made against Mr. Becker's advice and it caused her enormous financial stresses from that point onward.

- [296] The point here is that Mr. Becker obtained a substantial sum of money for Ms. Goodwin on October 4, 2004 and I consider that this is probably the effective end point to any delay argument. The fact that Ms. Goodwin placed herself in a financial predicament against Mr. Becker's advice, such that even the payment to her of \$75,000 did not alleviate her financial distress, is not a matter that establishes negligence on Mr. Becker's part.
- [297] Although perhaps unnecessary to do so, I will analyse the period from October 4, 2004 to March 14, 2005, the latter date being the date of trial and the end point for the plaintiff's delay argument.
- [298] Given that Ms. Goodwin had effectively already spent the money obtained by order made on October 4, 2004, Mr. Becker recommended that she make a further application for interim support. A hearing date was obtained in November, but Ms. Goodwin said she wanted further matters to be heard only by Crawford J. and she was prepared to wait for a further JCC scheduled to be before him on January 6, 2005. Accordingly, the delay from October 4, 2004 to January 6, 2005 cannot be attributed to Mr. Becker.
- [299] At the JCC on January 6, 2005 Ms. Goodwin walked out while the hearing was still underway. This left Mr. Becker unable to resolve this issue. Ms. Goodwin submits that Mr. Becker could have pressed on in her absence and taken whatever was offered. In fact, he could not have, because orders at JCCs concerning substantive matters may only be made by consent.
- [300] Again, fault for this aspect of delay on the issue of interim support cannot be attributed to Mr. Becker.
- [301] In late January Ms. Goodwin again instructed Mr. Becker to apply to court for interim support. Mr. Becker secured a hearing date of February 15, 2005, but in the meantime he gave her a cheque for \$4,000 that he drew on his own account. In her submissions Ms. Goodwin faults him for proceeding on that date, saying the application was doomed to fail because it was then just one month before the trial date. I disagree. Mr. Becker proceeded because he was instructed to do so, and I cannot see that he is to be faulted for that.

- [302] On February 15, 2005 Crawford J. again declined to order interim support, instead he ordered that \$10,000 be advanced from the house sale proceeds, with \$5,000 paid to Ms. Goodwin immediately and the further \$5,000 subject to obtaining certain further information and further order. A cheque for \$5,000 was given to Ms. Goodwin on February 17. This was just one month before the March 14 trial date. Again, I see no basis to argue that Mr. Becker delayed unduly the support application during this time frame.
- [303] Because Ms. Goodwin submits that the relevant period of delay ends at March 14, 2005 (the trial date) I would make the additional observation that any further support application between February 15 and the March 14 trial date would probably have been pointless.
- [304] As to Ms. Goodwin's submission about the "end result point of view" and retroactive support not ultimately being addressed, this submission is the subject of a separate allegation of negligence and it is convenient to address it later in these reasons.
- [305] Ms. Goodwin invites the Court to draw its own conclusions on negligence, relying on *R. v. Mohan*, [1994] 2 S.C.R. 9 at 23, 24, although I note that *Mohan* does not deal with this specific point and instead addresses in general terms the necessity of expert evidence to a trier of fact. However, the defendant agrees that judges may determine the standard of care in solicitors' negligence cases, citing *R. & L. Contracting Ltd. v. A and B et al.* (1981), 28 B.C.L.R. 342 (C.A.); *Roberge v. Huberman*, 1999 BCCA 196; *Leone v. R. Craig Campbell Corp.*, 2008 BCSC 983; and *Van Duzen v. Lecovin*, 2004 BCSC 1333. As a result, I agree that I may apply my knowledge and experience to assess whether Mr. Becker fell short of the standard of care of a reasonably competent family lawyer.
- [306] Based on my own assessment of the standard of care, I conclude for the reasons explained above that Mr. Becker did not fall below the standard of care of a reasonably competent family lawyer on the matter of the application or applications for interim support.
- [307] Before leaving this section I will address Ms. Goodwin's claim that she was forced into homelessness by the actions or inaction of Mr. Becker.
- [308] Ms. Goodwin knew from virtually the outset of the family litigation that the matrimonial home would be sold. Both Goodwins had agreed to the sale by at least May 2003 and this agreement was confirmed at a JCC on August 19, 2003, which was a full year before the home was actually sold. The home appears to have been listed for sale by at least October 2003, as evidenced by correspondence between counsel discussing lowering the listing price. A sale contract was entered into in May 2004 that set a completion date of August 12, 2004.
- [309] At various points thereafter Ms. Goodwin spoke of living in rental accommodation or in the Point Roberts cottage, staying with friends or her cousin, housesitting or, starting July 23, being admitted to hospital if she wished. On July 30 Mr. Becker gave Ms. Goodwin \$2,000 from his own funds to assist her; later, she told Mr. Becker she used half that sum to pay a deposit on the townhouse. There were many discussions about rental accommodation. Mr.

Becker had his staff draw up a list of available rentals and gave this list to Ms. Goodwin. By August 25 Ms. Goodwin had not made any progress on rental accommodation, but she indicated she could stay with her cousin or at the Point Roberts cottage. Mr. Becker told her that he had made arrangements, using the firm's credit card, for accommodation at a nearby hotel if she wanted.

- [310] In his evidence Mr. Becker said he understood that Ms. Goodwin would do one of the following: stay with friends, go to the Point Roberts cottage, go to a hotel or admit herself to hospital. Although in his testimony he did not mention the option of staying with her cousin, the evidence confirms that this was another option, and this was where Ms. Goodwin stayed after her discharge from hospital in early October 2004.
- [311] I am satisfied that Ms. Goodwin had several viable accommodation options and had no need to stay in her car or to consider herself "homeless". When asked at trial why she did not stay with friends or her cousin, Ms. Goodwin said "I was ashamed to tell anyone". This explanation is not rational. She had sold one house and was buying another that was not yet ready to be occupied; this situation was not a shameful one on any objective view.
- [312] I conclude that within the bounds of his professional obligations there was nothing that Mr. Becker did or failed to do that caused Ms. Goodwin to reside in her car for three days because she had viable accommodation options but chose not to use them. To the contrary, I consider that Mr. Becker probably went beyond his professional obligations by advancing \$2,000 of his own monies to her, by having his staff compile a list of available rental accommodation and providing that list to Ms. Goodwin, and by making arrangements for Ms. Goodwin's accommodation at a hotel if she wished.

ii. The Claim That Mr. Becker Failed to Secure the Husband's Obligations and His Pension

- [313] The allegations here are that Mr. Becker (1) failed to secure spousal and child support after he knew that Mr. Goodwin intended to leave the jurisdiction, and (2) failed to submit the proper forms to divide Mr. Goodwin's Domtar pension.
- [314] Mr. Goodwin was obligated to pay child and spousal support only after the order of March 14, 2005. However, Ms. Goodwin submits that since she told Mr. Becker some months earlier that Mr. Goodwin was planning to move to Bermuda, Mr. Becker ought to have requested security for support as part of the settlement negotiations.
- [315] Based on the evidence of the positions taken by Mr. Goodwin and his counsel throughout the family litigation, it is obvious that such a request would have been rejected outright.
- [316] Mr. Becker did, in fact, propose a lump-sum payment of support, on what appears to have been a one-year basis, in a letter to opposing counsel on March 11, 2005. There is no indication that this proposal was even responded to. The subject also appears to have also been canvassed at the March 14, 2005 hearing before Slade J.

- [317] Although this perhaps ought to end the analysis, I press on nonetheless because the plaintiff also discusses court orders, although without specifically asserting that Mr. Becker was negligent by failing to seek a court order granting security for future support payments.
- [318] Ms. Goodwin first raised the possible move to Bermuda in November 2004; she told Mr. Becker that she learned from her son Ian that Mr. Goodwin had applied for a job there. She emphasized to Mr. Becker that he was not to reveal that Ian was the source of the information. She wanted Mr. Becker to freeze Mr. Goodwin's assets. Mr. Becker reminded her that a s. 67 restraining order was in place.
- [319] The restraining order was a mutual s. 67 order, restraining disposition of assets, which had been made by consent at an August 19, 2003 JCC. For reasons not entirely clear, in November 2003 Mr. Becker also obtained a confirmation from Mr. Findlay that Mr. Goodwin would not liquidate any major assets without Ms. Goodwin's consent.
- [320] Ms. Goodwin raised the subject again in late January 2005, asking that Mr. Goodwin's wages be garnished and his pension frozen. As to the pension, it must be remembered that Mr. Goodwin was still working and was not collecting a pension at this time. He was not eligible to draw his pension until age 60, which occurred some years later (April 28, 2009). Mr. Becker told Ms. Goodwin that Mr. Goodwin's property (pension and RRSPs) would be tied up until trial (presumably this was a reference to the s. 67 restraining order) and if he should "bolt" after trial then Ms. Goodwin would have his pension and RRSPs against which to claim her support entitlement.
- [321] Although the evidence is not entirely clear on the timing of Mr. Goodwin's move, it appears from some of the documents that Mr. Goodwin moved to Bermuda to take up employment that commenced on September 1, 2005. He continued to pay child support until April 2006 and spousal support until November 2006. Arrears of support accumulated thereafter. As noted earlier, the ensuing dispute over arrears of support was eventually settled around March 2010 by a lump-sum payment from Mr. Goodwin of \$50,000.
- [322] Mr. Becker's retainer was terminated in August 2005 when Ms. Goodwin sent a letter of complaint to The Law Society. Accordingly, Mr. Goodwin was not in default of his support obligations during the time Mr. Becker represented Ms. Goodwin.
- [323] On the issue of security for support, Ms. Nordlinger's opinion is as follows:

A reasonably competent family lawyer would have advised the client that Bermuda was not a reciprocating state and advised her to attempt to obtain security for the support or lump sum support payable from the assets, if possible. Such Orders, however, are not easily granted, and are usually made where there has been a pattern of failure to pay, or there are special circumstances.

- [324] Ms. Nordlinger goes on to note that the Point Roberts property or Mr. Goodwin's post-equalization RRSPs might also have been a source of security, but the former was problematic because it was foreign property and the latter was uncertain because it would either require agreement or a court order, with attendant costs and risks.
- [325] In short, Ms. Nordlinger's opinion is not strongly in Ms. Goodwin's favour. I agree that orders securing support obligations are not easily granted, even less so when there is no pattern of default or any extraordinary circumstances. I also agree with the defendant that the two cases Ms. Nordlinger mentioned as providing possible support for such an order [Van de Perre v. Edwards, 2004 BCSC 537 and Parsons v. Parsons, [1995] B.C.J. No. 998 (S.C.)] are quite easily distinguishable. The former involved a case where there was a pattern of non-payment of support, non-observance of court orders and lack of cooperation by the payor, an American citizen living in a non-reciprocating state, who did not even attend the hearing; in the latter case a restraining order was made essentially to restore a situation that had previously been consented to.
- [326] Given that: (1) that there was no pattern of non-payment of support by Mr. Goodwin, nor any outstanding support obligation on him at all until March 14, 2005; (2) a s. 67 order restraining disposition of assets was in place from August 19, 2003 to March 14, 2005; (3) Mr. Goodwin remained a British Columbia resident throughout the time of Mr. Becker's retainer; (4) evidence of Mr. Goodwin's plans to move to Bermuda was problematic because the information came from the son and Ms. Goodwin prohibited Mr. Becker from disclosing that source; and (5) the history of this family litigation makes clear that any court application for security would have been hotly contested, I am unable to conclude that Mr. Becker's failure to take steps to secure future support payments fell below the standard of a reasonably competent family law lawyer in the circumstances of this case.
- [327] I turn now to another aspect of the pension issue. It was Ms. Nordlinger's opinion that Forms 1 and 2 ought to have been sent to Domtar (or perhaps the pension administrator) upon the signing of minutes of settlement or the granting of a court order.
- [328] Ms. Goodwin's entitlement to a share of Mr. Goodwin's Domtar pension was secured some years after the end of Mr. Becker's retainer. The documents required to secure Ms. Goodwin's portion of the Domtar pension were sent to the plan administrator by Ms. Goodwin's solicitors in December 2007. After that, Ms. Goodwin was to make an election on mode of payment of the pension. By April 2009 the plan administrator was still waiting for paperwork from Ms. Goodwin. A further delay ensued because of an ex parte order obtained by Ms. Goodwin's solicitors that restrained the plan from administering Mr. Goodwin's share of the pension. I pause to note that, interestingly, that ex parte order was set aside on a subsequent application by Mr. Goodwin, despite the fact that, by this time, he was living abroad and was thousands of dollars in arrears. Ultimately, in May 2010 Ms. Goodwin received the sum of about \$7,300 as a retroactive payment from the plan, and since that date she has received about \$560 monthly.

- [329] It is noteworthy that Mr. Tretiak, an experienced family lawyer, stated that despite several expressions of concern by Ms. Goodwin beginning in 2005 he waited until April 2009 to take steps to secure Mr. Goodwin's pension, or at least Ms. Goodwin's portion of it, because Mr. Tretiak knew that Mr. Goodwin could not access his pension until he turned 60.
- [330] Mr. Becker said he did not attend to the pension forms before the retainer ended because he was focusing on the pressing issue of the townhouse refinancing. The evidence shows that Mr. Tretiak and other lawyers in his office also saw the pension forms as not being urgent.
- [331] Although it is probably good practice to submit these pension forms sooner rather than later, on the evidence I am unable to conclude that Mr. Becker's failure, prior to the termination of his retainer, to submit these forms to the employer or pension plan administrator fell below the standard of a reasonably competent family lawyer. I would note that, in any event, no loss was shown to have resulted.
- iii. The Claims That Mr. Becker Failed to Address in the Final Settlement: (i) the "uncharacterized" sum of \$100,000; (ii) retroactive support; and (iii) Ms. Goodwin's debts
- [332] The first two issues are really two sides of the same issue. The allegation is that Mr. Becker ought to have ensured that part of the "uncharacterized" advance of \$100,000 was subsequently characterized as interim support. There would have been consequential adjustments to the property division, effectively giving Ms. Goodwin retroactive support. Alternatively, an amount might have been given for retroactive support.
- [333] In submissions, counsel for Ms. Goodwin said that the sum associated with retroactive support totalled \$11,350, based on monthly spousal support of \$1,250 from August 2004 to March 2005 and monthly child support of \$450 from January to March 2005 (her college-attending son moved in with Ms. Goodwin in January 2005).
- [334] I accept Mr. Becker's evidence that Mr. Findlay made it clear that retroactive support was absolutely unacceptable to Mr. Goodwin because property division had gone in Ms. Goodwin's favour. Mr. Findlay said if a claim for retroactive support were to be pressed then the dispute would have to be resolved at trial.
- [335] For Ms. Goodwin there were many problems with a trial. Due to her own instructions on the medical evidence she faced a strong likelihood, perhaps a virtual certainty, that she would have no admissible medical evidence supporting her claim that she was medically unable to work, and Mr. Goodwin took the position that she was able to work. Mr. Goodwin also insisted that their son Ian be called as a witness to give evidence about his post-secondary expenses and income, something that Ms. Goodwin opposed. Mr. Findlay also gave notice that he would be calling the parties' other son, Fraser, to testify about Ms. Goodwin's "demeanour and activities", as well as other relatives or acquaintances, including one person who had made observations of Ms. Goodwin that "suggest she is capable of working".

[336] The correspondence makes clear Mr. Findlay's intention to argue that Ms. Goodwin's needs were excessive because she had purchased a townhouse that was too expensive for her and there was other viable accommodation available for much less. Mr. Findlay also indicated that at trial he would be delving into Ms. Goodwin's dealings with her mother's account, where Ms. Goodwin had made substantial withdrawals, evidently as part of a general argument of financial profligacy on Ms. Goodwin's part.

[337] In summary, counsel for Mr. Goodwin indicated he would adopt an aggressive trial strategy that would challenge Ms. Goodwin in a very fundamental way.

[338] Ms. Goodwin relies on the expert evidence of Ms. Nordlinger, who opined on the failure to address the characterization of the \$100,000 advance. Ms. Nordlinger said:

In my view, the \$100,000 advance was treated as an advance on property division by the parties in the Minutes of Settlement. The failure was to seek spousal support on a retroactive basis, given the agreement which subsumed the \$100,000. Ms. Goodwin should have been advised that she had a retroactive support claim that had not been dealt with prior to settling the support issue. A part of that discussion would have been the advice that the \$100,000 advance had been considered as property division, and thus her claim for retroactive support was still alive. Failure to do so would have fallen below the standards of a reasonably competent family lawyer in 2004 and 2005.

[339] Two important assumptions underlie that opinion: (1) no retroactive support was sought, and (2) Ms. Goodwin was not advised of her claim for retroactive support prior to settling support generally. Ms. Goodwin has failed to establish either fact.

[340] As noted earlier, I accept Mr. Becker's evidence that he sought retroactive support on Ms. Goodwin's behalf but it was opposed in the strongest terms. I also accept his evidence that he told Ms. Goodwin that settlement would bring to an end her claim for spousal support arrears and the characterization of the \$100,000 advance. His evidence is confirmed by a number of events. Property division was discussed extensively at a JCC before Crawford J. on January 6, 2005, and the broad parameters of a settlement were discussed. Mr. Becker met with Ms. Goodwin the day before to go over her claims. The JCC prompted further negotiations on property division. On January 10, 2005 Mr. Becker wrote to Mr. Findlay (with a copy to Ms. Goodwin) as follows:

Our property settlement proposal makes no adjustment for the vehicle values and we are not prepared to engage in further equity adjustments. As referred to by Mr. Justice Crawford, your client has not paid any spousal support and if he wishes to engage in a discussion of the smaller points of asset equity then we can revisit the whole issue of the family's expenses paid since the separation.

[341] Ms. Goodwin was \$8,500 to the good on the vehicle values and the ultimate property settlement maintained that advantage for Ms. Goodwin. This supports the conclusion that retroactive support was not forgotten in the overall settlement.

- [342] That conclusion is also supported, at least partly, by the clerk's notes of the March 14, 2005 hearing before Slade J., which proceeded as a settlement conference. I pause to remark that it is unfortunate that there was no transcript of that proceeding put in evidence at this trial. In any event, the clerk's notes include various references to interim, retroactive and lump-sum spousal support that, as I have said, tend to confirm Mr. Becker's evidence that he sought retroactive support on Ms. Goodwin's behalf and that it was subsumed in the overall settlement.
- [343] The hearing before Slade J. was not at all brief. As indicated earlier, the clerk's notes indicate the case went from 11:00 a.m. to 12:45 p.m., with Mr. Becker outlining Ms. Goodwin's position until 11:55 a.m., including a substantial address from Ms. Goodwin herself, with the defence submissions being made thereafter. The lunch break was taken at 12:45 p.m. and the hearing resumed at 2:10 p.m., when counsel told the judge that the parties had resolved the case. The terms of the order were then spoken to, and the final note stated "all other corollary relief dismissed".
- [344] Ms. Goodwin's evidence concerning the March 14, 2005 court hearing is most unsatisfactory. Her assertion in direct examination that retroactive support was never mentioned at the hearing is quite obviously untrue, and her denial does substantial damage to the credibility of her account of this event. Her account was also not aided by her varying evidence as to whether she spoke at the hearing. She said initially that she had not been allowed to speak, she then said "I may have spoken" and then, "I remember talking about my disability". Ultimately she agreed that she told the judge she hoped to return to work in fall 2005.
- [345] Ms. Goodwin's further assertion that she thought the judge was going to make a decision, suggesting she had no idea that the purpose of the proceeding was to discuss and hopefully settle the disputed issues, and that the proceedings "just ended", is equally unworthy of belief.
- [346] In summary, I am satisfied that retroactive support was sought, that it was raised and discussed at the March 14, 2005 settlement conference and that it was subsumed in the overall settlement. I am also satisfied that Ms. Goodwin was aware at that time that the settlement she was entering into would bring her claim for retroactive support to an end.
- [347] Ms. Goodwin makes the related claim that her debts were not taken into account, either at the time of the October 4, 2004 hearing before Crawford J. (when, in addition to the \$100,000 payout to each party, Crawford J. also ordered the payout of \$40,000 to retire a line of credit used by Mr. Goodwin) or at the time of the settlement of the property issues.
- [348] Ms. Nordlinger finds no fault with Mr. Becker concerning the October 2004 hearing, noting that any remaining debt issues could be dealt with at the time of final settlement. I agree with that opinion.

- [349] As to the final property settlement, the essence of Ms. Goodwin's complaint is that some of the charges on the line of credit related to Mr. Goodwin's personal expenses and that her Visa debt, which by August 2004 totalled about \$8,900, had not been taken into account.
- [350] Mr. Goodwin conceded relatively early on that about \$4,600 of the \$40,000 line of credit balance had been incurred for his personal expenses, which corresponded to a credit of about \$2,300 in Ms. Goodwin's favour. However, through his counsel Mr. Goodwin took the position that Ms. Goodwin's August 2004 Visa statement showed charges solely for her personal use and therefore this debt was not to be shared. In testimony, Mr. Becker said that his own examination of Ms. Goodwin's Visa statement gave rise to concerns that some items were not family expenses. In cross-examination Ms. Goodwin admitted that some of the charges were personal. Included in these charges were a \$2,000 computer, a new cellular phone, and various other items.
- [351] There were numerous discussions and extensive negotiations on property division generally, including the debts of the parties, and there was give and take on both sides. At the JCC of August 19, 2003 Mr. Goodwin was adamant that he would not relinquish his interest in the Point Roberts property, which had been valued at US\$107,000, and that a \$200,000 inheritance he had received had largely been the source of its acquisition. In July 2004 Mr. Becker proposed that Ms. Goodwin's Visa debt be paid out as being a family debt but, as noted earlier, Mr. Findlay responded that the debt was not a family debt. At the end of the negotiations Mr. Goodwin agreed to pay C\$90,000 to Ms. Goodwin on the basis of a full half-share, the sum reflecting a significant increase in the ascribed value for the property. Similarly, he agreed that Ms. Goodwin did not have to pay any equalizing amount for her vehicle despite the \$19,000 disparity in value between the vehicles kept by each party.
- [352] Although Ms. Goodwin's credit card debt and the credit to Ms. Goodwin conceded by Mr. Goodwin on the line of credit were not the subject of specific agreements, I am satisfied that other aspects of property division went in Ms. Goodwin's favour. On an overall assessment of the evidence I am satisfied that debts were part and parcel of the negotiations on property division and that they were taken into account in reaching a settlement.
- [353] It is also apparent that Ms. Goodwin knew or should have known that the settlement included the settlement of liabilities. On January 14, 2005 Mr. Becker sent Ms. Goodwin a letter enclosing the correspondence between counsel on settlement. The correspondence made it clear that the tentative settlement was a settlement of the division of both assets and liabilities. Mr. Becker recommended that Ms. Goodwin accept the settlement, saying as follows:

It is our opinion that the settlement is fair and reasonable under all the circumstances and corresponds with the Judge's recommendations at the time of the Judicial Case Conference. The settlement proposal [] avoids the very significant costs of dealing in Washington State with the division of the equity in the cottage and the ongoing costs of litigation relating to all of the property division matters here in British Columbia. There is, of course, the very significant concern of the effects of the litigation on your emotional and physical well-being.

[354] Mr. Becker subsequently drew up minutes of settlement and sent them to Mr. Findlay. The minutes expressly refer to the full and final settlement of the division and determination of family assets and liabilities. Ms. Goodwin signed the minutes on February 18, 2005.

[355] In summary, I am satisfied that Ms. Goodwin's debts were taken into account as part of the final settlement and that Ms. Goodwin was either aware or should have been aware that the settlement to which she agreed meant the end to her argument that Mr. Goodwin should bear responsibility for her debts.

iv. The Claim That Mr. Becker Failed to Inform Ms. Goodwin That She Would Not Be Able to Access the House Sale Proceeds When They Were Paid

[356] Ms. Goodwin claims that she was unaware that her share of the matrimonial home sale proceeds was not freely available to her and that she negotiated several extensions to the townhouse purchase on the understanding that those proceeds would be available.

[357] Mr. Becker testified that he discussed with Ms. Goodwin the need to secure opposing counsel's consent for any payment or advance from the house sale proceeds. The date of that conversation was August 3, 2004, when Ms. Goodwin was going over her draft affidavit of that same date.

[358] The contemporaneous documents do not support Ms. Goodwin's assertion and instead support Mr. Becker's version of events. On July 20, 2004 Mr. Becker wrote two letters to Mr. Findlay, both copied to Ms. Goodwin, asking for Mr. Goodwin's position about mutual \$10,000 advances from the proceeds of sale of the matrimonial home. Of course, no consent would have been necessary if the parties had been free to access their respective shares upon the closing of the August 12 transaction. In an affidavit Ms. Goodwin swore on August 26, 2004, she said Mr. Goodwin refused to authorize the release of \$10,000 from the sale proceeds, and she stated "At the present time I am without any source of funds whatsoever". Those statements make it obvious that she knew the proceeds were not freely available to her. Ms. Goodwin agreed to several townhouse purchase extensions after the date of that affidavit, so I cannot accept that she signed the extensions based on an incorrect understanding that she had free access to her share of the house sale proceeds.

[359] I accept Mr. Becker's evidence on this point. I conclude that Ms. Goodwin was aware that the sale proceeds from the matrimonial home would not be freely available to her.

- v. Claims That Mr. Becker Failed To: (i) Inform Ms. Goodwin That the Vendor's Mortgage Had Not Been Discharged on May 31, 2005; (ii) Discharge the Mortgage On That Date; and (iii) Carry Out the RRSP Equalization Rollover In Time To Meet the Payment Date for the Vendor's Mortgage

[360] Each of these allegations arises out of the refinancing of the townhouse, a necessary step because of the maturity date of May 31, 2005 for the vendor's mortgage. The analysis requires a close examination of the events and their timing.

[361] The principal amount of the vendor's mortgage was about \$247,000. Through a mortgage broker Ms. Goodwin secured a commitment for a \$140,000 mortgage from Prospera Credit Union. This left a funding requirement of about \$107,000, which was to be made up by a combination of cashed-in RRSPs and Ms. Goodwin's remaining house sale proceeds. The plan for cashing in the RRSPs was that it would be done in stages to minimize withholding tax.

[362] Mr. Becker was notified of the Prospera mortgage commitment on April 11, 2005. The following day Mr. Becker received an RRSP transfer form from Mr. Findlay. In his letter Mr. Findlay said he needed Ms. Goodwin's RRSP statement showing her December 31, 2004 balance to arrive at the correct sum needed for RRSP equalization. Mr. Findlay wrote again on May 12, 2005 asking for the statement.

[363] On May 13, 2005, following several emails from Ms. Goodwin in which she raised the refinancing, Mr. Becker responded:

I am still pulling all the pieces together for the mortgage. We have lots of time so don't worry, I will tell you when to worry. I have another piece of paper for you to sign for the RRSPs. Can I come out to see you this Sunday ?

[364] Ms. Goodwin signed the RRSP transfer form on the Sunday (May 15, 2005) as indicated in the email, and Mr. Becker sent the form to Mr. Findlay the following day. In his covering letter Mr. Becker indicated to Mr. Findlay that he was in the process of obtaining a copy of the December 2004 RRSP statement from the plan administrator.

[365] Mr. Becker testified that he asked Ms. Goodwin to provide him with a copy of the RRSP statement, but he conceded he did not have a note of this. Ultimately, the matter was dealt with by using a March 2005 RRSP statement that included an "opening value" as at January 1, 2005. This was sent to Mr. Findlay on June 3, 2005.

[366] Ms. Goodwin signed the Prospera mortgage documents on May 31, 2005.

[367] Mr. Becker and Mr. Findlay agreed on the RRSP equalization amount (\$55,912.92) on June 7, 2005. The equalization itself was completed on June 29, 2005.

[368] In submissions, Ms. Goodwin maintains that she did not know that Mr. Becker had not discharged the vendor's mortgage. I do not accept this assertion. Ms. Goodwin knew that the refinancing required her to liquidate RRSPs and she would have known that she had yet

to do so. She certainly knew by June 6 that the vendor's mortgage had not been retired because on that day she received a letter from the vendor to that effect. In fact, four days earlier (June 2) she sent an email to Mr. Becker in which she noted that the vendor's mortgage had "expired", a curious term to use if she were under the impression that the mortgage had been paid out.

- [369] For reasons that are not clear, Ms. Goodwin then took steps to exaggerate the gravity of the situation. The June 6 letter from the vendor, reproduced earlier in these reasons, was very mild in tone, the vendor merely inquiring about the status of the situation. She emailed Mr. Becker, saying - falsely - that the vendor said the mortgage was in default and that the letter was "very nasty". On July 14 the vendor wrote to Ms. Goodwin inquiring about mortgage payments that were to have been made for June and July but also extending the mortgage to September 30, 2005. Ms. Goodwin again misrepresented the situation to Mr. Becker by asserting that the vendor was "dealing to foreclose" and failing to tell Mr. Becker about the extension she had been granted.
- [370] Mr. Becker testified that he did what he could to assure Ms. Goodwin that her townhouse was not in jeopardy. He said that conveyancers in his office were dealing with both the vendor and the vendor's notary and were keeping them informed. He sent Ms. Goodwin an assuring email on June 20.
- [371] Mr. Becker said that they tried to get Ms. Goodwin to come to the office for a meeting, but she resisted. This evidence is confirmed by contemporaneous notes. She was finally convinced to come to the office for a meeting on July 22. This was the last meeting between lawyer and client.
- [372] Also on July 22 Mr. Becker sent to Ms. Goodwin a mortgage payout calculation and a reconciliation of trust amounts received and paid. The mortgage payout statement showed that Ms. Goodwin needed to cash in RRSPs sufficient to generate about \$35,000. It also showed that Mr. Becker was making available all remaining funds in his trust account without holding back any monies for unpaid legal fees. This was confirmed by Mr. Becker in a later email to Ms. Goodwin.
- [373] Ms. Goodwin responded with a number of questions challenging the wisdom of the settlement. On July 30 she demanded payment from Mr. Becker of sums from the property division beyond the amount actually available. On August 1 Ms. Goodwin sent Mr. Becker an email that was highly critical of him, and instructed him to "do nothing further to incur legal costs". On August 9 she sent a letter of complaint to The Law Society.
- [374] Mr. Becker responded to the complaint by letter dated September 12, 2005. In his response he said he was prepared to see that the RRSPs were liquidated and to complete the refinancing "simply to bring this aspect to a close to avoid Ms. Goodwin having to educate another lawyer on this issue". Ms. Goodwin did not take him up on this offer.

- [375] As noted earlier, Ms. Goodwin's claim is that Mr. Becker failed to discharge the vendor's mortgage on its maturity date, May 31, 2005. The allegation that he failed to equalize RRSPs in time for the May 31 date is really just a subset of the main allegation.
- [376] Ms. Nordlinger's opinion supports this claim as she concluded that Mr. Becker fell below the standard of a reasonably competent family lawyer in the following ways:
- (a) failing to equalize the RRSPs in a timely fashion given the need to refinance the vendor's mortgage by May 31, 2005;
 - (b) failing to provide Ms. Goodwin with an account so she could ascertain the amount of money she had for the financing; and
 - (c) failing to immediately advise Ms. Goodwin that the mortgage was not discharged and the reason for it.
- [377] Mr. Becker's response is not so much that he met an appropriate standard but rather that any stress Ms. Goodwin suffered stemmed from her commitment to a townhouse purchase that was beyond her means, and that the refinancing delay caused no financial loss.
- [378] I conclude that Mr. Becker did not meet the standard of care of a reasonably competent family lawyer in certain aspects of the refinancing; in particular, he ought to have seen to the RRSP equalization with much more alacrity than he did. It is not at all clear, for example, why there was a delay between April 12, when Mr. Findlay sent the RRSP transfer form to Mr. Becker and inquired about the December 2004 statement, and May 12, when Mr. Becker contacted Ms. Goodwin to arrange a meeting on May 15. While Mr. Becker attributed the delay to Ms. Goodwin for failing to send him the required RRSP statement, obtaining the statement directly from the financial institution (which I accept would require a written authorization from Ms. Goodwin) was a simple solution to that problem that was not pursued in a timely way.
- [379] I also conclude that Mr. Becker ought to have made clear to Ms. Goodwin, preferably in writing, that the May 31 refinancing date would not be met, the reasons why the refinancing could not be done in time, the consequences of that delay (ideally, after having conferred with the vendor to ascertain its position) and the plan to resolve the issue. While he gave general assurances to Ms. Goodwin that she had nothing to worry about, he ought to have done more.
- [380] I conclude that Mr. Becker did not fall below the standard of a reasonably competent family lawyer in failing to deliver a legal bill to Ms. Goodwin, at least insofar as it is alleged that the bill was needed to sort out the refinancing. On this point I disagree with Ms. Nordlinger's opinion, although the reason for my differing conclusion is that Ms. Nordlinger's opinion is based on an assumption that the account was needed to determine the amount of money available to Ms. Goodwin for the refinancing. As Mr. Becker's July 22 mortgage payout calculation made clear (and which was confirmed in an email from Mr. Becker to Ms. Goodwin of August 1), he was prepared to make all trust monies available for

the refinancing irrespective of any legal fees owed.

vi. The Claim That Mr. Becker Failed To Render an Account or Accounts When Asked To Do So by Ms. Goodwin

- [381] Ms. Goodwin complains that Mr. Becker failed to render a final account when asked to do so. She asserts that her requests began in March 2005, prior to the trial. A final bill was not rendered until January 24, 2006.
- [382] The first request, of a sort, came in a somewhat rambling email sent March 12, 2005, which was the Saturday before the Monday trial on the 14th, with Ms. Goodwin asking, "How much do I owe you to date? Please respond as I need to know and so does the judge". The request is puzzling not only for its timing but also because Mr. Becker had sent out his latest bill on March 3 and it was accompanied by a billing and credit summary, showing all billings to date.
- [383] A more definitive and logical request came after the trial, when in an email to Mr. Becker dated March 23 Ms. Goodwin asked for a "fee itemization" in order to ascertain how much money she had. She repeated the theme of not knowing how much money was available to her in emails dated March 24, March 30 and July 19. On July 22 Ms. Goodwin asked for her "legal bill amount as of today's date".
- [384] Mr. Becker testified that he was reluctant to issue a final account because there were tax consequences for him and there was no immediate prospect that Ms. Goodwin would pay it. His intention was to complete the refinancing and to then sit down with Ms. Goodwin to discuss the payment of his accounts.
- [385] Ms. Goodwin's new solicitors were told the value of the outstanding work-in-progress (about \$13,000) at a meeting held on October 7, 2005. The final bill dated January 6, 2006 billed fees of \$13,125.
- [386] In submissions, the defendant points out that from March 2005 to July 2005, Ms. Goodwin sent Mr. Becker numerous emails. These emails, some of which were lengthy and rambling, questioned various aspects of the settlement, reported on the lifestyle and recent goings-on of her now ex-husband in a manner bordering on the obsessive, set out at length her various living costs and other expenses and the difficult financial situation she was in, expressed a desire to revisit various settled issues and to get back before Crawford J., and asked Mr. Becker to do the minimum while simultaneously asking him to do a great many things.
- [387] The defendant put the situation this way:
290. From March, 2005 until the end of his retainer on August 1, 2005 Mr. Becker was faced with a client who could not pay for his legal fees, who wanted him to do the minimum amount of work, yet who was instructing him by email to carry out various tasks and was ramping up for another trial. In hindsight, it is clear that Ms. Goodwin wanted to know her final bill.

However, the bigger picture from Mr. Becker's perspective was completing the refinancing, and from his conversations with Ms. Goodwin, his impression was that she agreed to this. Given Ms. Goodwin's inability to pay her bill, Mr. Becker was of the view that once the financing was in place, he and Ms. Goodwin could sit down and review the entire accounts.

[388] I agree with that summary and characterization of the situation. However, the fact remains that Ms. Goodwin asked for an updated legal bill and Mr. Becker did not issue one until much later. I conclude he was duty-bound to issue an updated bill within a reasonable time when he was asked to do so, and he did not.

vii. The Claim That Mr. Becker Was Negligent in Charging Excessive Fees

[389] In her submissions on her claim of excessive fees, Ms. Goodwin refers to the difference between the fees charged and the fees she had expected, the relative simplicity of the case, her hiring a chartered accountant to sort out the accounting and the fact that the ultimate fee agreed upon was less than what Mr. Becker had originally charged.

[390] It is difficult to discern a cause of action here. The question of what overall fee is reasonable in any given situation is like beauty in that typically it is in the eyes of the beholder. There is no evidence to suggest that Mr. Becker believed his charges to be unfair or unjustifiable. Even if the fees might seem high on a cursory assessment of the main work done, Ms. Goodwin was a challenging, highly erratic client who demanded much of Mr. Becker and his time. The fees charged might have been justifiable, and they might not. The remedy to any client who feels she has been overcharged is to commence a Legal Profession Act bill review, as was done in this case. I would add that the fact that the review proceeding settled for a lesser sum than that originally billed really reveals nothing other than that the parties settled for reasons best known to them.

[391] On this issue there was no evidence of a breach of any standard of care or implied contractual term. For the Court to itself fill that gap would effectively require the Court to do its own Legal Profession Act review, which I consider inappropriate. Furthermore, given the statutory review process provided by the Legal Profession Act, which provides a complete monetary remedy in cases where lawyers' fees are in dispute, I entertain doubt that, absent unusual circumstances, there is a place for the application of the laws of negligence or contract that is independent of that statutory process. To accede to the plaintiff's argument would be to create a cause of action in negligence or breach of contract in favour of a client any time a registrar reduced a legal bill or a lawyer settled a bill dispute for an amount less than the amount originally billed, and this cannot be correct.

[392] The plaintiff has failed to establish her claim of negligence and breach of contract based on excessive fees.

viii. The Claim That Mr. Becker Failed to Maintain Proper Accounting Records

[393] Ms. Goodwin has four subcategories under this general heading. The first relates to the alleged failure of Mr. Becker to credit payments and other monies, though in the plaintiff's submissions only two credit items are mentioned. The larger of the two items, a payment of \$3,200 made on Ms. Goodwin's behalf by a friend, is shown in a billing summary attached to the Acknowledgment Ms. Goodwin signed on October 25, 2004, so I am left puzzled by the claim that no record of this payment exists. In any event, even if there were errors in his records (something which, in general, is not uncommon) the question of "proper accounting records" is something that requires expert evidence in order to establish a breach of a standard of care, and here there is none. For that reason Ms. Goodwin has failed to establish any negligence or breach of contract on Mr. Becker's part relating to the state of his accounting records.

[394] The second aspect of this claim is the allegation that Mr. Becker promised a significant fee discount but never gave one. On this point I agree with the following submissions of the defendant:

280. Mr. Becker's evidence was that he had offered Ms. Goodwin a discount in July, 2004 as a result of the disagreement between the Goodwins over the Pt. Roberts property. He suggested a \$2,500 discount as a way of mitigating the concession for Ms. Goodwin. He also offered a 10% discount in an effort to bring to an end the lists of household effects that were being brought by Ms. Goodwin as non-negotiable lists prior to settlement.
281. Mr. Becker stated that his intention was that at the end of the process, he would look at the body of work done and review the account to assess his fees in relation to the outcome. This is confirmed by Ms. Goodwin in her email of April 23, 2006 that Mr. Becker never stated he would give a stated write-off or stated discount.
282. Mr. Becker did not get a chance to consider the legal accounts in the manner he had intended prior to Ms. Goodwin terminating his retainer. At any rate, Ms. Goodwin received a sizeable discount as a part of the settlement of the taxation.

[References omitted.]

[395] The third aspect of this general claim is that Mr. Becker was negligent in having Ms. Goodwin sign an Acknowledgement of his fees when she was newly discharged from hospital and, she says, was not able to read or comprehend documents. Again, it is not clear what the cause of action is here. There is no evidence that Mr. Becker breached a standard of care or contractual term in this regard, nor any evidence of damages suffered because Ms. Goodwin signed the Acknowledgement.

[396] In the event that the plaintiff looks to the Court to draw its own conclusions as to a breach of the standard of care, I conclude that the plaintiff has failed to establish a breach in associated with Ms. Goodwin signing the Acknowledgement. On this point I agree with and adopt the following submissions of the defendant:

271. On October 25, 2004 Mr. Becker asked Ms. Goodwin to sign an Acknowledgement of fees. Mr. Becker's evidence was that it had become apparent that Ms. Goodwin's plans in respect to purchasing the townhouse would draw down on the \$100,000 ordered by Mr. Justice Crawford to an extent that the legal accounts would remain unpaid, contrary to their earlier agreement, and contrary to his request that \$45,000 be applied to his outstanding accounts. Ms. Goodwin now alleges that the Acknowledgement was inappropriately obtained because she was recently released from the hospital.
272. The evidence, both in terms of the surrounding circumstances (including the fact that Ms. Goodwin had, over the months prior to signing the Acknowledgement, re-negotiated the terms of the purchase of her townhouse directly with the builder), and in terms of Ms. Goodwin's own medical evidence does not support this accusation. On October 4, 2004, Dr. Gopinath noted Ms. Goodwin's Axis V on the Global Assessment of Functioning, which is a scale to qualify level of functioning, as an 80-85. Dr. Gopinath testified that this indicated absent or minimal symptoms.
274. Mr. Becker's evidence was that he had Ms. Goodwin sign the Acknowledgement in the client interview room, which formed part of the "office". He asked the legal administrator, Terry Becker, to attend during the discussions and to witness the execution of the Acknowledgement. He wanted Ms. Goodwin to be aware that they were having a frank discussion about the terms upon which they would be moving forward. Mr. Becker advised Ms. Goodwin that she was free to take the Acknowledgement and get independent advice. He said that Ms. Goodwin said she was insulted at the notion that she would hire another lawyer, saying that she was happy with his services and with his accounts.
275. Mr. Becker's evidence was that he advised Ms. Goodwin that he would carry on with her, but that he wanted her to understand that it was unusual for accounts to remain outstanding and accumulate. He wanted confirmation from her that his accounts were satisfactory. He wanted to hear then and there if there were any problems. Mr. Becker's evidence was that if he was going to continue to invest in the file, then he wanted to know that Ms. Goodwin was satisfied with his services and the amount of the accounts. This approach makes sense considering that Mr. Becker was giving up the security he had being the immediate payment of his accounts from the net sale proceeds.
276. Ms. Goodwin signed the Acknowledgement in Mr. Becker's presence. He left briefly to make a photocopy of the signed Acknowledgement and returned with the signed document. Ms. Goodwin was shown the total bills to date, which were \$65,025.88 and she did not express any concerns. A term of the Acknowledgment was that she fully intended to pay all accounts as and when funds became available.
277. The Acknowledgement sought by Mr. Becker was not unreasonably obtained. The evidence suggests that Ms. Goodwin was of sound mind when she signed it and she was given the opportunity to seek independent legal advice. Mr. Becker was carrying Ms. Goodwin's legal fees. The agreement was that they would be paid out after the sale of the matrimonial home.

In the meantime, Ms. Goodwin entered a purchase agreement for the townhouse, and required substantially the entire draw ordered by Mr. Justice Crawford. Given these circumstances, it was entirely appropriate for Mr. Becker to seek some assurance that his accounts would be paid.

[References omitted]

- [397] The final claim under this general heading is that Mr. Becker failed to promptly deal with his legal accounts, such that a charging order was registered against Ms. Goodwin's property for a lengthy period of time and which caused the plaintiff to lose her refinancing.
- [398] This issue harkens back to the earlier claim that Mr. Becker breached his duty to Ms. Goodwin by failing to deliver a bill as requested. Had the matter of his accounts been dealt with, so Ms. Goodwin submits, the charging order would not have been necessary.
- [399] I find this argument to be flawed. By July 22, 2005 Ms. Goodwin knew that for the townhouse refinancing she had available to her the entirety of the remaining monies in trust. Contrary to her submissions, the delivery of an account was not a step that was necessary for her to know exactly what monies were available to her for the refinancing. Ms. Goodwin chose to terminate the retainer by sending a complaint to The Law Society. Each side then retained counsel, Mr. Becker's counsel asserted a solicitor's lien on his behalf, and the matter was resolved by consent by a charging order that was registered against Ms. Goodwin's property.
- [400] Ms. Goodwin submits that Mr. Becker would not have needed a charging order if he had come to an agreement with Ms. Goodwin concerning his fees. She also submitted: "Had Mr. Becker transferred the funds to Ms. Martin without security the charging order would not have been necessary". Both of these are based on circular reasoning; in effect, she argues that had the parties come to an agreement, there would have been no dispute. The fact of the matter was that there was a dispute. Ms. Goodwin terminated the retainer, she declined to accept Mr. Becker's offer to complete the refinancing, Ms. Martin stepped in on Ms. Goodwin's behalf, the dispute heated up and Mr. Becker then asserted a right of lien that he was entitled to assert. The lien issue was resolved between counsel through the vehicle of a consent charging order. Matters played out after that and the fee dispute was eventually resolved.

[401] There is no proper basis for this claim.

ix. The Claim That Mr. Becker Failed to Deliver up His Files to Ms. Goodwin's New Solicitors in a Timely Way

- [402] Ms. Goodwin submits that after their meeting on October 7, 2005, where it was agreed in principle that Mr. Becker's lien claim would be resolved by way of a charging order, Mr. Tretiak sent numerous letters to Mr. Turriff seeking delivery of the file. The file was not delivered until January 6, 2006 and even then it was merely a copy of the file. The delivery of the remaining file materials took place in early March 2006.
- [403] There were numerous emails, correspondence and discussions between counsel concerning the delivery of Mr. Becker's file, all of which were bound together with the subject of Mr. Becker's solicitor's lien and the security that was to stand in its place. There were also numerous discussions as to the wording of the undertaking that was to govern the use of the monies being sent, again as part of the process by which the solicitor's lien was foregone in favour of other security. These matters were not resolved until December 23, 2005. Arguably, this is the earliest that the documents could rightly have been demanded, as Ms. Martin's letter to Mr. Turriff of that same date suggests. Six boxes of file materials were delivered on January 6, 2006, the date on which the charging order was registered against Ms. Goodwin's property.
- [404] In the event that the relevant starting point for the delivery of the file is the date the charging order was registered, then there was no delay at all. In the event that December 23 is the relevant date, the delay is inconsequential.
- [405] By letter to Mr. Turriff dated February 24, 2006, Mr. Tretiak complained that the file that was delivered was not the original file but consisted of copies, and he noted various other document omissions. Mr. Turriff responded by referring to an early email exchange in which he had said that Mr. Becker would keep "whatever he owns". Ultimately, while expressly conceding nothing in terms of what was agreed or not agreed, Mr. Turriff sent two further boxes of documents on March 8, 2006 (saying, "you now have everything there ever was"), and some further batches of emails from Mr. Becker's computer system the following day, March 9, 2006.
- [406] The plaintiff makes a broad assertion of undue delay in the delivery of the file without addressing any of the many details surrounding the discussions between counsel and the various steps taken. I consider it unsatisfactory for the Court to be asked to determine who is wrong and who is right in this dense debate between counsel without any substantive submissions addressing the issues, and so I decline to do so. The result is that the plaintiff has failed to show that Mr. Becker was in breach of any duty or agreement to deliver his file.
- [407] More to the point, perhaps, the plaintiff has not pointed to any issue or problem that stemmed from the delivery of a mere copy of the file on January 6, 2006, other than referring to scenarios that did not actually occur but which might have resulted in prejudice to her (e.g., "There could have been actions taken in the matrimonial file to which [Mr. Tretiak] would have been unable to respond").

[408] I conclude that no claim has been made out under this heading.

(c) Damages

i. Psychological Injury/Mental Distress - Legal Basis

[409] Ms. Goodwin seeks compensatory damages for the mental distress, and the psychological injuries consequent on that distress, she alleges were caused by various actions or inactions on Mr. Becker's part.

[410] Ms. Goodwin's limited success on liability, particularly her failure to show that negligence of Mr. Becker caused her to spend three days in her car, removes much of the basis for her claim of damages for psychological injury or mental distress, but the two liability findings in her favour mean that this claim still must be addressed.

[411] The parties disagree on the test for compensability. The defendant argues that anxiety and stress are not sufficient to ground an award of damages, relying on *Mustapha v. Culligan of Canada Ltd.*, [2008] 2 S.C.R. 114, 2008 SCC 27 [Mustapha]. In *Mustapha*, the Court said:

[8] Generally, a plaintiff who suffers personal injury will be found to have suffered damage. Damage for purposes of this inquiry includes psychological injury. The distinction between physical and mental injury is elusive and arguably artificial in the context of tort. As Lord Lloyd said in *Page v. Smith*, [1996] 1 A.C. 155 (H.L.), at p. 188:

In an age when medical knowledge is expanding fast, and psychiatric knowledge with it, it would not be sensible to commit the law to a distinction between physical and psychiatric injury, which may already seem somewhat artificial, and may soon be altogether outmoded. Nothing will be gained by treating them as different "kinds" of personal injury, so as to require the application of different tests in law. [Emphasis added.]

[9] This said, psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness: see *Hinz v. Berry*, [1970] 2 Q.B. 40 (C.A.), at p. 42; *Page v. Smith*, at p. 189; *Linden and Feldthusen*, at pp. 425-27. The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept.

[412] The plaintiff submits that *Mustapha* is distinguishable, noting that in *Mustapha* there was no evidence that the defendant knew of the plaintiff's particular sensibilities; here, Mr. Becker knew that Ms. Goodwin was psychologically frail.

[413] The plaintiff cited several solicitor's negligence cases where damages were awarded for mental distress, including *Campbell v. Ragona*, 2010 BCSC 1339, where the Court discussed the issue as follows:

[614] On occasion, courts in this country have awarded damages for mental distress or disappointment caused by a lawyer's negligence or breach of fiduciary duty. Where mental suffering is a foreseeable result of a solicitor's negligence, consequential damages are generally sufficient: *Dorey v. Romney* (1982), 51 N.S.R. (2d) 53; *LeBlanc v. Dewitt* (1984), 57 N.B.R. (2d) 141 (QB). In *Szarfer v. Chodls* [1986] O.J. No. 256, 54 O.R. (2d) 663 (Ont. H.C.J.), the defendant lawyer, in breach of his fiduciary duty to his client, used confidential information concerning his client's marital problems to engage in a sexual relationship with his client's wife. The court found that the plaintiff suffered reactive depression and anxiety, nervous shock, mental anguish and loss of memory as a result of the defendant's conduct. The court assessed general damages for pain and suffering and loss of enjoyment of life in the amount of \$30,000.

[615] Here, the plaintiff suffered some mental distress as a result of the dismissal of the Hong Kong action and its aftermath. However, it is difficult to quantify the distress, anxiety and depression attributable to the defendants' negligence in the conduct of the Hong Kong action when the plaintiff was also suffering from mental distress resulting from the Hong Kong MVA itself, from Wellfund, and more recently from his terminal cancer. In these circumstances, I would assess Mr. Campbell's damages for non-pecuniary losses attributable to the defendants' negligence or breach of fiduciary duty at \$20,000.

[414] I conclude that damages for mental distress are available where mental suffering is a foreseeable result of a solicitor's negligence, as discussed in the extract from *Campbell v. Ragona* quoted above. *Mustapha* is distinguishable because, unlike the present case, it did not involve a contractual or other relationship that gave rise to a foreseeability of mental distress in the event of a breach.

ii. Causation

[415] I will next deal with the issue of causation as it relates to the claim of psychological injury.

[416] It is clear from the evidence that Ms. Goodwin suffered from serious psychological problems that pre-dated Mr. Becker's involvement. There were suicide attempts or at least parasuicidal ("cry for help") attempts in both her teen years (upon a relationship breakup) and later (upon separation from her first husband). From October 2000 to February 2001 doctors noted significant psychological problems with Ms. Goodwin ("complaining of staring into space, trying to do one constructive thing per day, depressed") arising out of work stress and conflict, as well as difficulties with her daughter and with her mother's failing health. She was diagnosed with reactive depression. In December 2001 she again complained of being depressed.

[417] It is also clear that Ms. Goodwin suffered from serious psychological problems during the time Mr. Becker represented her but before any alleged negligence on his part. In March 2003 she complained that she was "shaky" and her "brain was fried" so she could not work, and Ms. Goodwin reported that she could not read, "feels lost" and feels exhausted all the time. In May 2003 she attempted suicide by overdosing on medication, the event prompted

merely by reading her husband's affidavit responding to her support application. She reported that she missed her mother, who was her "guardian angel" and that her husband had turned into "a monster". She was referred to psychiatric care.

[418] Dr. Gopinath said that as of October 2003 Ms. Goodwin already had PTSD, depression, anxiety disorder and panic attacks and that it was probable that Ms. Goodwin had a generalized anxiety disorder since approximately March 2003. Of that time Dr. Gopinath said:

[Ms. Goodwin] was incessantly crying during the interview, unable to provide much detail, being extremely grief stricken, expressing ideas of hopelessness, helplessness, worthlessness, and guilt feelings, grieving about the loss of her job, mother and the marriage. She had poor attention and concentration and problems with immediate memory as a result.

[419] Dr. Gopinath attributed her problems to her having been "unceremoniously" removed from her job and her resulting grief over that job loss, as well as grieving the loss of her mother and the loss of her husband. Dr. Gopinath offered Ms. Goodwin the option of a voluntary admission to a psychiatric unit, but she declined. By November 2003 she was seeing Dr. Gopinath weekly.

[420] As of March 2004 Ms. Goodwin complained of cognitive difficulties after learning her husband had holidayed in Mexico without taking their sons. Dr. Gopinath noted that this event again brought on feelings of grief for the loss of her job, a loss of her identity and the loss of her mother, and that Ms. Goodwin had considered suicide as a result. She was by this point getting group therapy twice a week.

[421] Significantly, on July 26, 2004 Ms. Goodwin described herself to Dr. Gopinath as being "homeless" even though she was still living in the matrimonial home at that time. Dr. Gopinath made arrangements for her to be admitted to a psychiatric hospital unit if she wished. Later, the stated origin of her fear of homelessness was the period of days she spent living in her car (an event she blamed on Mr. Becker), which occurred a month after this first reference to being "homeless".

[422] All of these events and diagnoses occurred before any alleged negligent acts of Mr. Becker and well before the two events on which I have actually found Mr. Becker to have been negligent or in breach of contract.

[423] Ms. Goodwin had many stressors after that. She committed herself to a house purchase that caused her enormous problems right from the outset, not the least of which was that she had no present means to buy it. She was rescued from that immediate problem by a combination of the vendor's agreement to hold a mortgage for a limited time and the Court ordering a substantial payment from the matrimonial home sale proceeds. She was so angered by the news that her husband had entered into a new relationship that she was described as being in a "frenzied state". Ms. Goodwin thereafter followed her husband's activities much more closely than simple information-gathering related to the litigation

would warrant. The proceedings at the JCC in January 2005 caused her to walk out due to a panic attack. As to that event, Ms. Goodwin told Dr. Gopinath that she had become acutely suicidal because she had encountered her husband at the JCC. Also in January 2005 the parties were negotiating on property issues, no doubt a source of additional stress. By early February 2005 she presented to Dr. Gopinath with escalated anxiety, depression and other serious symptoms concerning such matters as her son "acting like her husband", her daughter becoming sick and her aunt's health problems, which reminded her of her mother's terminal illness. By March 2005 Ms. Goodwin was also facing an imminent trial, with its attendant stresses.

[424] Again, all of these things occurred before the two events I have found to have involved negligence or breach of contract on Mr. Becker's part (the delayed legal bill and the refinancing) and independently of the support issue for which I have not found any breach of a standard of care on Mr. Becker's part but which is the primary event Ms. Goodwin focused upon in terms of her mental state.

[425] The medical evidence is not strongly supportive of Ms. Goodwin's contention that her depression and PTSD were caused or contributed to by the aspects of the Mr. Becker's handling of the litigation that are the subject of this claim. The strongest opinion evidence supporting causation came from her family doctor, Dr. Newton, but he conceded that his opinion derived essentially from the reports or opinions of Dr. Gopinath and was based on the history Ms. Goodwin related to him, a history that I conclude was incorrect or skewed in significant respects. For those reasons I find I am unable to accord his opinion any weight.

[426] In his report of November 16, 2009 Dr. Gopinath said the following:

Ms. Nora Lee Goodwin's diagnosis rests with Recurrent Major Depression which is not related to any mood disorder which implies that there is an inherent tendency for appearance of depression spontaneously with or without stress. Her depression was related clearly to multiple adverse life stressors of [a cumulative] nature. Though she was able to deal with the marital problems from her second husband's excessive drinking for a while the last straw was the death of her mother and loss of her job. Her depression reached the severity of qualifying for major depression due to the quantifiable increase in her depressive features. Though she has had brief periods of spontaneously remitting depression in the past it was only reactive in nature and she had no features suggestive of any mood disorder. However, her diagnosis changed later with the addition of Post Traumatic Stress Disorder with continuous emotional, verbal and behavioural harassment by her husband and due to the struggles she had in procuring funds to buy the town home in Abbotsford. Continued adjournments and other indirect ways of controlling the patient by her husband through explosive behaviour had left severe traumatic marks on her particularly when she was unfit to return to work due to persistent depressive features, escalation of her tremors and dystonia which physically prevented her from taking any job that involved coming before the public and lack of finances contributed for her Post Traumatic Stress Disorder and escalation of her depression by early 2005.

- [427] Leaving aside the notable omission of any mention of the three-day car stay as a significant event in her psychiatric history, with the possible exception of the reference to "lack of finances" Dr. Gopinath's opinion does not lend much support to Ms. Goodwin's claim that Mr. Becker's representation was a cause or contributing cause of her ongoing psychological problems.
- [428] The defence expert, Dr. Sehon, did not agree with the diagnosis of PTSD. He felt that Ms. Goodwin suffered from a pre-existing major depressive disorder going back many years. He concluded that the cause of her depression is "multi-factorial" and that it is difficult to identify one stressor as being responsible. He felt Ms. Goodwin focused excessively on her dealings with Mr. Becker and minimized other psychological stressors.
- [429] I conclude that the plaintiff has failed to show that her post-retainer psychological problems were caused or contributed to by any actions of Mr. Becker that I have found to have been negligent or in breach of contract. I need not resolve the diagnostic differences between the two psychiatrists because it is clear that, whatever the diagnosis, it was present before the events on which liability has been found and, for that matter, before any of the other events relied upon by the plaintiff and for which the liability findings have gone against her.
- [430] The most that can be said for the plaintiff on this point is that the two events on which liability has been found added some very modest additional stress, but in metaphorical terms they were no more than a few drops added to an already overflowing cup. With Ms. Goodwin being under enormous stress from various quarters, already having the diagnosis of the same significant psychiatric or psychological problems that are the subject of her claim and, so the medical evidence indicates, faring badly under the general stress of the hotly-contested family litigation, it is not possible to pick out these two less-significant events and conclude that they caused or contributed to her ongoing psychological condition.

iii. Mental Distress

- [431] Though the plaintiff has failed in proving an entitlement to compensatory damages for psychological injury, there remains the issue of damages for mental distress.
- [432] The two events on which I have found liability are (1) the failure to deliver a legal bill in a timely way and (2) the failure to address the townhouse refinancing in an appropriate and timely way.
- [433] As to the delivery of the legal bill, I accept that Ms. Goodwin requested a "fee itemization" in March 2005, evidently believing that it was necessary information for her refinancing. By July 22, 2005, however, she knew or should have known that the bill was not necessary for this purpose. The plaintiff has not shown any adverse effect or any material additional stress (that is, in addition to the many other stresses in her life) for the delay in issuing the bill after July 22, 2005.

- [434] I accept that there was some additional stress or distress imposed on the plaintiff from March to July 22, 2005 because of Mr. Becker's failure to deliver a bill as requested. In the scheme of things the additional stress would have been minimal and I consider that nominal or relatively nominal damages are appropriate. I award \$1,000 on this aspect. In fixing this amount I have taken into account that a nominal award is called for in any event as a result of the finding of a breach of contract on Mr. Becker's part: see *Chaster (Guardian ad Litem of) v. LeBlanc*, 2007 BCSC 1250, a solicitor's negligence case, where Hinkson J. (as he then was) said:
- [221] But that does not end the matter in contract. An award of damages for breach of contract, where no actual damage is proven, is well established in the case law. A plaintiff in such a case is entitled to nominal damages, the practical significance of which is that the plaintiff thereby establishes a legal right: *Waddams, S.M., The Law of Damages*, looseleaf ed. (Toronto: Canada Law Book, 1991) at para. 10; *McGee v. Clarke*, [1927] 1 W.W.R. 593 (B.C.C.A.); *State Vacuum Stores of Canada Ltd. v. Phillips*, [1954] 3 D.L.R. 621 (B.C.C.A.).
- [222] While there are cases referred to in *Pitch & Snyder, Damages for Breach of Contract*, 2nd ed. looseleaf (Toronto: Carswell 1989), at pages 5-1 to 5-5 where not even nominal damages were awarded, despite a proven breach of contract, I have concluded that the weight of the authorities and the findings of fact in this case warrant an award of nominal damages, which I fix in the amount of \$1,000.00.
- [435] The second event on which liability has been found relates to the townhouse refinancing. Here I have concluded that Mr. Becker did not attend to the equalization of the RRSPs in a timely way, and that he ought to have made it clear to Ms. Goodwin that the May 31 refinancing date would not be met, the reasons why the refinancing could not be done in time, the consequences of that delay and what was being done to resolve the issue. As noted earlier, while Mr. Becker gave general assurances to Ms. Goodwin that she had nothing to worry about, he ought to have done more.
- [436] I accept that Ms. Goodwin endured some distress as a result of those failings, but it is difficult to assess this additional stress because, as I find, she exaggerated the situation to a great extent, including actively misrepresenting the townhouse vendor's communications on the subject. The analysis is further complicated because a good proportion of the stress associated with the later, ultimately successful, efforts to refinance her townhouse stems from the fact that the townhouse purchase was more than she could reasonably afford and she had a continuing inability to work.
- [437] The authorities indicate that awards of damages for mental stress in these kinds of cases are relatively modest: see *Campbell v. Ragona*, *supra*, and *Fidler v. Sun Life Assurance Co. of Canada*, [2006] 2 S.C.R. 3, 2006 SCC 30, 271 DLR (4th) 1, [2006] 8 WWR 1, 57 BCLR (4th) 1. In each of those cases the award of damages for mental distress was \$20,000. In another case, *Szarfer v. Chodos* [1986] O.J. No. 256, 54 O.R. (2d) 663 (Ont. H.C.J.), referred to in *Campbell v. Ragona*, the award was \$30,000.

[438] Doing the best I can in the circumstances, I conclude that an appropriate award of damages for this aspect of mental distress is \$10,000.

(d) Special Damages

i. Legal Fees

[439] Ms. Goodwin claims for a substantial amount of the legal fees that she incurred after she terminated Mr. Becker's retainer. She submits that Mr. Tretiak's services would not have been needed but for Mr. Becker's negligence and breaches of contract, in particular to deal with the refinancing and charging order and to take steps to secure Mr. Goodwin's spousal support obligation and Domtar pension. Mr. Tretiak billed about \$55,000 for his services, but Ms. Goodwin accepts that some services would have been required in any event. She suggests an award of \$30,000.

[440] Mr. Tretiak said that his billings included work done on the legal bill review, the Law Society complaint and the present negligence action. Obviously these cannot be included when considering Ms. Goodwin's claim for special damages.

[441] In addition, Ms. Goodwin has not been successful on several of the issues that are the subject of this claim and so her claim for legal expense related to those issues cannot succeed. The largest component of that expense is probably the work done to enforce payment of support after Mr. Goodwin defaulted.

[442] This leaves just the refinancing. There are two difficulties with the claim for the legal fees associated with that work. The first is that Mr. Becker offered to complete the refinancing but Ms. Goodwin did not accept this offer. She could have mitigated her damages by having Mr. Becker complete this step. It is possible that the law on mitigation would not require that Ms. Goodwin accept Mr. Becker's offer in these circumstances, but the plaintiff did not advance that argument.

[443] The second difficulty with this claim is that most of the work done related to Mr. Becker's rightful assertion of a solicitor's lien and to the consent charging order that was provided as security in its place. Other time was spent exploring the notion of a self-directed RRSP mortgage, obtaining a mortgage for a higher amount (the "Higher Mortgage"), and obtaining an alternative mortgage when the credit union declined to waive its "no other charges" condition on the Higher Mortgage to allow the charging order to be registered. None of this work was the consequence of any negligence or breach of contract on Mr. Becker's part.

[444] Ms. Goodwin has not shown an entitlement to be reimbursed for any portion of the legal fees and disbursements billed to her by Mr. Tretiak.

ii. Mortgage Broker Fee

[445] Ms. Goodwin claims the sum of \$7,800 for reimbursement of a mortgage broker's fee that was incurred when the credit union offering the Higher Mortgage declined to waive its "no other charges" condition. A scramble for alternative financing then ensued and the broker's fee was incurred.

[446] The commitment for the Higher Mortgage was obtained by Ms. Goodwin's later counsel after the parties had agreed in principle to the charging order. The commitment letter for that mortgage contained the "no other charges" condition. Mr. Becker had no involvement with that mortgage commitment. The mere fact that there was a charging order in his favour, entered into by consent to provide alternative security to his solicitor's lien, does not make him liable for this expense.

[447] There is no basis for this claim.

(e) Aggravated and Punitive Damages

[448] I see no basis for awarding aggravated or punitive damages in this case.

X. Conclusion

[449] Ms. Goodwin is awarded damages of \$11,000.

[450] Costs may be spoken to, if necessary.

"Blok J."

Schedule A

Date

Event

October 2002

Ms. Goodwin's first consultation with Mr. Becker. He prepares a letter for Ms. Goodwin to give to Mr. Goodwin. Mr. Goodwin retains counsel (Mr. Findlay) in November.

January 7, 2003

Ms. Goodwin's mother dies.

February 1, 2003

The couple separates, but they remain living in the matrimonial home. Mr. Becker and Mr. Findlay exchange correspondence.

March 20, 2003

Ms. Goodwin delivers a doctor's note to Mr. Becker indicating she is medically unfit to work.

March 21, 2003

Mr. Becker commences a divorce action on Ms. Goodwin's behalf.

May 14, 2003

Mr. Becker delivers an application for interim child and spousal support. May 30 is subsequently set as the hearing date.

May 21, 2003

Statement of defence and counterclaim filed.

May 26, 2003

After reading Mr. Goodwin's response affidavit Ms. Goodwin ingests a bottle of pills in an apparent suicide attempt.

May 30, 2003

Ms. Goodwin informs Mr. Becker's office that the parties have worked out support arrangements directly, so the support application is not necessary.

August 13, 2003

Ms. Goodwin tells Mr. Becker that she did not need an application for interim spousal and child support but would need something when the house sold.

August 19, 2003

JCC before Chamberlist J. The parties agree on joint appraisal of Pt. Roberts property, the listing for sale of the matrimonial home, a s. 57 declaration and a mutual s. 67 restraining order. Ms. Goodwin agrees to provide authorizations for medical records or the records themselves concerning any health condition relied upon for either spousal support or asset reapportionment.

Fall 2003 to early 2004

Mr. Goodwin is off work due to a strike.

November 4, 2003

Mr. Findlay writes regarding his client's understanding that Ms. Goodwin plans to buy a townhouse for an amount beyond the amount she could reasonably afford; he warns that if she should do so it would be "on her own accord and at her own peril". Mr. Becker discusses this with Ms. Goodwin, suggesting she consider more modest accommodation or rental accommodation pending resolution of the asset division and support issues.

November 28, 2003

Mr. Findlay writes Mr. Becker to confirm that his client has not and would not liquidate any major assets without Ms. Goodwin's consent.

December 17, 2003

Further JCC. Parties agree to have a four-way settlement meeting on January 12, 2004.

January 7, 2004

Ms. Goodwin informs Mr. Becker that while she was content to be bought out on the Point Roberts property she was dissatisfied with the appraisal figure for the property and would get her own appraisal. She expresses the view, much repeated later on, that Mr. Goodwin has been earning money "under the table" while he is on strike.

January 12, 2004

Settlement meeting. The parties agree that the discussions will proceed on the basis of equal division of assets. Mr. Goodwin indicates he is prepared to purchase Ms. Goodwin's interest in the Point Roberts property on the basis of the current appraisal. Ms. Goodwin agrees that she will obtain her alternate appraisal as soon as possible. Pensions and CPP credits would be divided as per Part 6 of the Family Relations Act, and RRSPs equalized.

February 22, 2004

Mr. Findlay writes to Mr. Becker to confirm Mr. Goodwin was only prepared to use the existing appraised value of the Point Roberts property as a basis for the buy-out. He offers spousal support of \$500 per month for one year, or until Ms. Goodwin secures employment. Mr. Becker rejects the offer on March 1.

March 4-5, 2004

Ms. Goodwin asks Mr. Becker to adjourn the trial (scheduled for April 5) and to cancel a scheduled examination for discovery of Mr. Goodwin, due to her health problems. She tells Mr. Becker she is having a major breakdown and is attending upon a psychiatrist. Ms. Goodwin agrees that support issues should be left until the sale of the family home.

March 17, 2004

Mr. Becker writes to Ms. Goodwin to seek instructions regarding the second appraisal of the Pt. Roberts property.

March 24, 2004

Ms. Goodwin tells Mr. Becker that she is not opening his letters to her.

April 16, 2004

Ms. Goodwin tells Mr. Becker she has taken no steps to get a second appraisal, but she would do so after the family home was sold. She also tells Mr. Becker she is very worried about her daughter, who has serious health problems.

May 12, 2004

Ms. Goodwin tells Mr. Becker she is having a difficult time coping with her daughter's illness and with her job.

May 20, 2004

A second appraisal on the Pt. Roberts property is delivered to opposing counsel, showing a value of US\$143,000.

May 26, 2004

Mr. Findlay agrees to allow Mr. Becker's office to handle the conveyance of the family home provided that the proceeds are held in Mr. Becker's trust account.

July 2004

The parties enter into contract for sale of family home for \$426,000, with a completion date of August 12, 2004.

July 5, 2004

Ms. Goodwin tells Mr. Becker that she is investigating renting a 3-bedroom place following the sale of the home. Mr. Becker writes to Ms. Goodwin to say "we can offer you no assurance that matters will be resolved by that time and as a consequence you need to ensure you have a place to go." He adds that it makes sense for her to rent on a temporary basis.

On the same day Ms. Goodwin indicates that her plan is to stay in the Pt. Roberts property.

July 8, 2004

Ms. Goodwin tells Mr. Becker that she broke into the Pt. Roberts home and removed an item or items from it. She instructs Mr. Becker that she needs a court order for support as soon as possible.

July 2004

The parties exchange settlement offers through their counsel. Ms. Goodwin gives Mr. Becker instructions to seek property division on the family home and the vehicles in her favour in certain ways, i.e., not on the basis of equal division, and the division of the Pt. Roberts property on the basis of the second (higher) appraisal.

July 14, 2004

As part of a letter discussing settlement, Mr. Findlay delivers an appraisal report that critiques the plaintiff's report and puts the value of the Pt. Roberts property between US\$120,000 and US\$125,000.

July 15, 2004

Mr. Becker delivers an application for an order allowing Ms. Goodwin exclusive occupancy of the Pt. Roberts home, following Ms. Goodwin's indication that she wished to reside there.

July 20, 2004

Examination for discovery of Mr. Goodwin.

July 21, 2004

Mr. Becker proposes to Mr. Findlay that \$10,000 be paid to each party from the sale proceeds of the family home. On July 21 Mr. Findlay rejects that offer, urging instead an overall property settlement.

July 21, 2004

Mr. Findlay delivers application for divorce, division of assets and for an order that Mr. Goodwin have exclusive occupancy of the Pt. Roberts home.

July 23, 2004

Ms. Goodwin tells Mr. Becker that she did not get the rental accommodation she had hoped for, that Dr. Gopinath suggested she admit herself to a psychiatric hospital on a voluntary basis, and that she had looked at two \$291,000 townhomes to as potential purchases.

Mr. Becker advises her against buying, saying she could something for much less and that it was not in her best interests to make such a commitment.

July 30, 2004

Mr. Becker provides Ms. Goodwin with \$2,000 from his own funds because she needed money to move her goods to storage. Ms. Goodwin tells Mr. Becker that she is being sent to the hospital.

August 3, 2004

Mr. Becker meets with Ms. Goodwin, who in late July signed an agreement to purchase a townhouse for about \$297,000, subject to financing. Mr. Becker tells her this would not work as she would not have a settlement of the asset division in time.

Mr. Goodwin also tells Mr. Becker that she is housesitting for a friend until August 26, 2004 and that she was still approved for admission to hospital should she choose to go.

August 5, 2004

Mr. Becker writes to Mr. Findlay serving an affidavit of Ms. Goodwin and requesting a date to hear an interim support application later in the month. Ms. Goodwin's affidavit states that she expects to be working in September.

The support application is subsequently scheduled on a short leave basis for August 26.

August 6, 2004

Mr. Becker offers to have a staff person in his office make inquiries about rental accommodations for Ms. Goodwin. Ms. Goodwin is told that Mr. Becker's assistant would phone her the next working day (a Monday) with a list of potential apartments.

August 12, 2004

Sale of family home completes. Net proceeds total about \$330,000.

August 9 to 15, 2004

Mr. Becker is away from the office.

August 20, 2004

Mr. Becker writes to Mr. Findlay to propose that he consent to a \$10,000 payment to Ms. Goodwin from monies in trust; if so, the support application would be adjourned.

August 24, 2004

Mr. Findlay delivers response materials, including a summary trial application for asset division, and Mr. Becker considers these have to be responded to by Ms. Goodwin, but he cannot contact her. The application is therefore adjourned. It is later reset for September 24.

August 25, 2004

Ms. Goodwin contacts Mr. Becker and tells him that she is not well enough to work and that she expects to be hospitalized. She accepts Mr. Becker's recommendation that he obtain a report from her psychiatrist, Dr. Gopinath.

In early September Dr. Gopinath provides a brief note confirming Ms. Goodwin's inability to work and follows this up with a more extensive letter and attached consultation report on September 9.

Late August - Early September 2004

Ms. Goodwin lives out of her car for three days.

September 3 - October 4, 2004

Ms. Goodwin is in hospital by voluntary admission. She stays with her cousin following her discharge.

September 2004

Trial date set for March 14, 2005, for three days.

September 15, 2004

Ms. Goodwin tells Mr. Becker's staff that she will attend the hearing on September 24 as her treating professionals had said she should.

September 16, 2004

Mr. Becker writes Mr. Findlay to say that his instructions are to seek reapportionment in Ms. Goodwin's favour due to her need for economic self-sufficiency.

September 22, 2004

Ms. Goodwin tells Mr. Becker that she would not be attending the hearing. The hearing is rescheduled to October 4.

October 4, 2004

Hearing of support application. Crawford J. orders that \$100,000 be paid to each party from the house sale proceeds, with the characterization of the payment to be left to a later date. A further \$40,000 is released in order to pay off a line of credit. A mutual s. 67 restraining order is also made. Crawford J. grants leave to have a further JCC and declares himself seized.

October 6, 2004

Mr. Becker provides a cheque for \$20,000 to Ms. Goodwin.

October 12, 2004

Mr. Becker provides a further cheque for Ms. Goodwin in the amount of \$30,000. He leaves a message with Ms. Goodwin that he will require that \$50,000 be maintained in his trust account to secure his unpaid legal bills.

October 2004

Ms. Goodwin proceeds with the townhouse purchase, disregarding Mr. Becker's concerns that she may have problems qualifying for a regular mortgage when the vendor financing ends in March 2005 (extended shortly to May 31, 2005). Mr. Becker asks Ms. Goodwin what would happen if she could not qualify for a mortgage at that time and Ms. Goodwin responds that she could get a mortgage broker.

October 22, 2004

Mr. Becker writes to Ms. Goodwin to confirm that she has told him she intends to complete the purchase of the townhouse despite his recommendation that she not do so, due to the nature of the transaction and the fact that she will over-extend herself in the purchase.

October 22, 2004

Mr. Becker advises Ms. Goodwin that he is prepared to make \$55,000 available to her but was going to hold back \$45,000 to be applied to outstanding legal fees.

October 23, 2004

Ms. Goodwin informed Mr. Becker that she wished him to proceed with an application for interim support. She reiterated this on November 15, 2004. Counsel agreed on a hearing date (November 24) but Ms. Goodwin indicated that she wanted further matters heard only by Crawford J. and she was prepared to wait for the further JCC scheduled to be before him on January 6, 2005.

October 25, 2004

Ms. Goodwin signs a document entitled "Acknowledgement" by which she acknowledged a list of outstanding bills for legal fees and disbursements attached to the Acknowledgment, totalling \$65,000. She acknowledged as well that each of the bills rendered was a final bill, that she was satisfied with the services and that the fees and disbursements were fair and reasonable.

October 29, 2004

Ms. Goodwin's townhouse purchase completes. \$25,000 is transferred out of trust to contribute to the closing costs on the conveyance of Ms. Goodwin's townhouse.

Late November 2004

Ms. Goodwin becomes aware that Mr. Goodwin has a girlfriend and is very angry about this.

November 23, 2004

Ms. Goodwin leaves a message with a member of Mr. Becker's staff that one of her sons has told her Mr. Goodwin has an interview for a job in Bermuda. She indicates that she does not want Mr. Goodwin or Mr. Findlay to know the source of that information.

November 26, 2004

Mr. Becker meets with Ms. Goodwin and they discuss Mr. Goodwin's plans to move to Bermuda. Mr. Becker refers Ms. Goodwin to the s. 67 order that is in place. He makes a note to send copies of the order to the pension fund and RRSP plan administrators.

January 6, 2005

JCC before Crawford J. Mr. Findlay maintains the position that Ms. Goodwin is capable of working, so spousal support should be limited in amount and duration. There is a detailed discussion of asset division. Ms. Goodwin attends only part of the JCC, having departed due to being upset at the position being taken by Mr. Findlay on spousal support.

Mid-January 2005

Counsel exchange settlement proposals concerning the division of assets.

January 2005

In emails to Mr. Becker, Ms. Goodwin expresses concerns over her difficult financial position and her fear that Mr. Goodwin is planning to leave the country.

January 26, 2005

Mr. Becker provides Ms. Goodwin with a cheque for \$4,000 out of his general account, which is reflected as a disbursement in a later legal bill.

January 27, 2005

Mr. Becker contacts court schedulers to obtain dates before Crawford J. for the hearing of a support application.

February 9, 2005

Ms. Goodwin prohibits Mr. Becker from using or releasing any clinical records (her family doctor's records had just been received) and demands that he give her the records Mr. Becker received. Ms. Goodwin confirms these instructions in subsequent emails. On February 17 she again instructs Mr. Becker that he is to have no direct dealings with Dr. Gopinath.

February 15, 2005

Application for interim support heard by Crawford J. He orders that \$10,000 be advanced, with \$5,000 paid to Ms. Goodwin immediately and the further \$5,000 subject to obtaining certain further information and further order. A cheque for \$5,000 is given to Ms. Goodwin on February 17.

February 15, 2005

Mr. Becker writes to Ms. Goodwin, saying "if it is [Mr. Goodwin's] intention to bolt after trial then you will have the RRSPs and pension against which to claim a full pension entitlement.

February 16 and 18, 2005

Minutes of Settlement on property division signed by the parties and their counsel.

February 18, 2005

Mr. Becker provides a cheque to Ms. Goodwin for \$5,000 from his general account. This sum is reflected as a disbursement on a later account.

February 28, 2005

Mr. Findlay writes to Mr. Becker, taking the position that Mr. Goodwin has very little ability to pay spousal support.

March 7, 2005

Mr. Becker receives the sum of \$49,024.72 from Mr. Findlay representing the reconciliation of the net sales proceeds and the balance payable from the transfer of Ms. Goodwin's interest in the cottage to Mr. Goodwin.

March 11, 2005

Ms. Goodwin advises Mr. Becker that he may now submit the medical reports of Dr. Gopinath and Dr. Swift (the GP) and that the doctors could be called as witnesses at trial.

March 12, 2005

Ms. Goodwin advises Mr. Becker that only she and her son Ian may be called as witnesses.

March 14, 2005

Trial date. With leave of the judge (Slade J.) the matter is stood down to allow the parties to discuss settlement.

A consent order is spoken to and granted, which among other things provides for spousal support of \$1,250 per month and child support of \$450 per month, subject to review in six months following the filing of updated Form 89 financial statements.

March 2005

Mr. Becker contacts a mortgage broker acquaintance of his to assist Ms. Goodwin. A lending institution (Prospera) is identified but it requires a reduction of \$25,000 in Ms. Goodwin's consumer debt in order to qualify for a mortgage.

March 20, 2005

Ms. Goodwin emails Mr. Becker to express concerns that they did not ask for or get any arrears of spousal support, and says they should see Crawford J. again to get support from at least August 2004 to March 2005.

March 27, 2005

Mr. Becker provides Ms. Goodwin with a cheque for \$25,000 to apply to her consumer debt.

May 15, 2005

Ms. Goodwin signs an RRSP transfer form. On May 16 Mr. Becker writes Mr. Findlay to report that Ms. Goodwin does not have a copy of the RRSP statement showing the relevant balance in her account, so he has requested one from the plan administrator.

May 27, 2005

Ms. Goodwin is approved for a mortgage up to \$140,000.

June 2005

The RRSP accounts are equalized upon a transfer by Mr. Goodwin to Ms. Goodwin of \$55,900.

June 6, 2005

The townhouse vendor writes to Ms. Goodwin to inquire about the status of the matter and about the mortgage payment for June 2005.

July 14, 2005

The townhouse vendor agrees to extend the date for repayment of the vendor's mortgage to September 30, 2005.

July 22, 2005

Mr. Becker provides Ms. Goodwin with a reconciliation of proceeds received as well as a mortgage payout, the latter showing \$73,000 in trust available and about \$35,000 needing to be funded by cashed-in RRSPs.

August 9, 2005

Ms. Goodwin sends a letter of complaint regarding Mr. Becker to the Law Society. On August 11, 2005 the Law Society sends a letter to Mr. Becker enclosing a copy of the complaint and requests his response.

September 12, 2005

Mr. Becker responds to the Law Society.

September 15, 2005

Ms. Martin writes to Mr. Becker on Ms. Goodwin's behalf. Among other things, Ms. Martin notes that Mr. Becker has failed to address an updated Form 89 for Ms. Goodwin.

September 16, 2005

Mr. Becker replies to Ms. Martin, noting that Ms. Goodwin has effectively terminated his retainer by virtue of the Law Society complaint.

September 21, 2005

Russell Tretiak, Q.C. goes on the record for Ms. Goodwin in the family law case.

October 3, 2005

Mr. Becker retains Gordon Turriff, Q.C. to represent him on the legal bill dispute/review.

October 4, 2005

Ms. Martin files an Appointment for the review of Mr. Becker's bills.

Ms. Martin subsequently delivers a Notice of Application for production of Mr. Becker's file, for an order that the original file be delivered to Mr. Tretiak, and for a declaration that the bills in question were interim and not final bills.

Mr. Turriff delivers a response on October 14, 2005.

October 7, 2005

Agreement reached between counsel for Ms. Goodwin and Mr. Becker that a consent charging order would be entered and then registered against the title to Ms. Goodwin's Abbotsford townhouse. The order is to remain on title until Mr. Becker is paid in full (following review by a registrar) or the parties settle.

October 20, 2005

Vendor agrees to extend mortgage repayment deadline to November 30. It is later extended to December 8.

October 31, 2005

Mr. Turriff emails Ms. Martin, saying "Mr. Becker agrees, without prejudice to his right to maintain his possessory lien claim until you have signed and returned the consent charging order, to deliver, by Monday November 14, 2005, copies of all documents listed in your client's Notice of Motion that are in his possession".

November 23, 2005

Ms. Martin delivers the signed consent charging order to Mr. Turriff. Mr. Turriff files it in court on November 30, 2005.

December 1, 2005

The proposed Mortgagee (Prospera) declines to proceed, due to charging order that is to be registered.

December 19, 2005

The agreed sum of \$60,000 is paid from the remaining trust monies to Ms. Goodwin's counsel.

January 3, 2006

Mr. Turriff writes to Ms. Martin to say that once the charging order is registered against Ms. Goodwin's townhouse, the file and the documents could be given to Ms. Martin by January 9, 2006.

January 6, 2006

The townhouse refinancing completes. The new mortgage and charging order are registered against its title.

Mr. Turriff delivers six boxes of file materials to Ms. Martin.

January 10, 2006

Pre-hearing conference in the review proceeding. A two-day hearing is set for March 15 and 16 to determine the question of interim vs. final bills (the date is later changed to April 19). The April 19 date is later adjourned and rescheduled to August 2.

Registrar Sainty directs Mr. Becker to deliver any final bill before 4 pm on January 24, 2006.

January 24, 2006

Mr. Becker delivers a final bill.

March 8 and 9, 2006

Mr. Turriff provides further boxes of file materials.

July 2006

Mr. Turriff delivers a Notice of Constitutional Question regarding the jurisdiction of the registrar.

August 2, 2006

This hearing date is adjourned by consent as counsel for the AG is not available on that date.

October 3, 2006

Mr. Tretiak's office files requisition for a hearing before a judge, set for February 13, 2007. This hearing is later adjourned to April 2007 and then to October 2007.

September 2007

The fee dispute settles. Mr. Becker agrees to pay Ms. Goodwin the remaining monies in trust (\$13,500), plus \$20,000 as a refund of fees paid, plus a further \$3,000 for costs. The charging order is removed from the title of the townhouse.

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/13/21/2013BCSC2148.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/goodwin-v-becker-2013>

Prepared on 29 October 2026 · Esheria