

CANADA / JUDGMENT

Graham v. Roberts

2025 BCSC 368

COURT

Supreme Court of British Columbia

DECIDED

5 March 2025

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2025 BCSC 368 Graham v. Roberts

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Graham v. Roberts,

2025 BCSC 368

Date: 20250305

Docket: S235935

Registry: Vancouver

Between:

Anne C. Graham

Client

And

Peter J. Roberts, K.C., Partner, Lawson Lundell

Solicitor

Corrected Judgment: The text of the judgment was corrected at paragraphs 12, 22 and 95, where changes were made on April 10, 2025.

Before: Associate Judge Hughes

(as Registrar)

Reasons for Decision

The Client, appearing in person:

A.C. Graham

Counsel for the Solicitor:

P.J. Roberts, K.C.

Place and Dates of Hearing:

Vancouver, B.C.

November 6-8, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 5, 2025

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Introduction

- [1] Anne C. Graham (the "Client" or "Ms. Graham") commenced this proceeding under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA] to review the bills of her former lawyer, Peter J. Roberts, K.C. (the "Lawyer" or "Mr. Roberts"), who is a partner at Lawson Lundell LLP (the "Firm").
- [2] The bills totalled \$111,228.11, of which \$17,275.50 remains outstanding. The Client seeks a reduction of over \$60,000 in the overall billings.

Background

- [3] In March 2021, Ms. Graham retained the Firm, specifically Mr. Roberts, to assist her in recovering funds loaned to a start-up entity, Lifeguard Health Inc. ("Lifeguard") and its principal, Jeff Hardy ("Mr. Hardy"). The funds were advanced piecemeal over a period of months between December 2018 and October 2019. The transactions were poorly documented, with records consisting primarily of text messages between Ms. Graham and Mr. Hardy and a handwritten promissory note dated March 28, 2019 (the "Promissory Note"). Repayment was due no later than December 31, 2019.
- [4] Although the parties agreed on the amounts loaned, which totalled \$158,000, they disagreed as to whether Mr. Hardy was personally liable and the amount of interest owing. The loans were characterized as short-term, high risk loans with stipulated repayment amounts and dates rather than interest rates. One of the significant issues to be resolved was whether the effective annual interest rate, based on the documented repayment terms, violated the prohibition in s. 347 of the Criminal Code, R.S.C. 1985, c. C-46 on interest rates above 60%.
- [5] Prior to retaining the Firm in March 2021, Ms. Graham made some unsuccessful collection attempts with the assistance of a collection agency. As will be referenced later, her evidence is that the agency quoted \$50,000 to pursue collection through litigation, which Ms. Graham declined.
- [6] When Ms. Graham first retained the Firm, her instructions were to pursue a negotiated resolution. She provided the Firm with a detailed briefing package including her correspondence with Lifeguard's counsel, prior offers and her instructions for settlement.

- [7] The Firm's first step, as requested by the Client, was to review the documents provided and prepare an opinion letter. That opinion letter, in the form of a four-page memorandum dated March 25, 2021 (the "First Memorandum"), set out the Firm's assessment of the strength of her claim and recommended negotiation strategy. Based on the Firm's assessment of the enforceable interest rate, its recommended settlement offer was considerably lower than that proposed by the Client in her briefing package.
- [8] Following the Client's request for clarification of the calculations contained in the First Memorandum, the Firm provided a three-page supplemental memorandum dated March 30, 2021 (the "Second Memorandum"), with a new interest rate analysis based on simple interest rather than compounded interest. The Second Memorandum contained a revised opinion that the Client's legal position was weaker than previously thought, and reiterated the Firm's recommendation not to litigate unless necessary.
- [9] On the Client's instructions, the Firm sent a settlement offer to Lifeguard's counsel, which was rejected. The Client then instructed the Firm to commence litigation, and a Notice of Civil Claim was filed on June 2, 2021.
- [10] Following an exchange of documents and examinations for discovery, the Firm filed a summary trial application on June 24, 2022. After being rescheduled several times, including twice due to lack of a presider, the summary trial was conducted before Madam Justice Sharma on January 11, 2023. Reasons for Judgment were released on April 21, 2023, indexed as *Graham v. Hardy*, 2023 BCSC 645 (the "Judgment"). The Judgment was largely in the Client's favour, holding that Mr. Hardy was personally liable for the loans along with Lifeguard, and confirming the interest rate calculated by the Firm on behalf of the Client for the term of the loans (up to the statutory maximum of 60%).
- [11] The parties reappeared before Sharma J. on April 28, 2023, seeking clarification as to the rate of interest applicable after December 31, 2019. The Client was again successful, as Sharma J. found that the same rate of interest as determined in the Judgment would apply from December 31, 2019 to April 21, 2023, and post-judgment interest pursuant to s. 7 of the Court Order Interest Act thereafter: *Graham v. Hardy*, 2023 BCSC 802 (the "Supplemental Judgment").
- [12] Following the conclusion of the summary trial, the Firm engaged in negotiations with Lifeguard's counsel regarding a suitable payment arrangement. A payment arrangement was confirmed by way of a consent order dated July 13, 2023. As provided in the consent order, Mr. Hardy paid an initial \$30,000 to the Firm on May 23, 2023.
- [13] Mr. Hardy and Lifeguard filed a notice of appeal of the Supplemental Judgment on May 19, 2023.

The Lawyer-Client Dispute

- [14] Despite the favourable decisions in this court, Ms. Graham is dissatisfied with the fees charged by the Firm in their successful representation of her.
- [15] Madam Justice Sharma describes Ms. Graham as "a self-employed, experienced business consultant based in Vancouver [who] often assisted new start-ups with strategic advice and mentorship. Prior to 2000, she held sales, management, and executive positions in a number of well-established companies." (Judgment, para. 7).
- [16] Ms. Graham's evidence is that she is experienced in working with lawyers, and that she retained Mr. Roberts for this particular case on the recommendation of a friend and because she had favourable dealings with the Firm in the past.
- [17] Ms. Graham signed the Firm's retainer agreement on March 5, 2021 (the "Retainer Agreement"). Attached to and forming part of the Retainer Agreement is the Firm's Terms of Engagement.
- [18] Ms. Graham provided the requested initial retainer in the amount of \$2,000, and the firm commenced work as described above.
- [19] The Firm sent invoices to the Client at the end of each month for work performed to the end of the previous month. For example, the first invoice, dated April 28, 2021, was for work up to and including March 31, 2021. The Client paid each invoice upon receipt until June 2022.
- [20] After receiving the April 26, 2022 invoice, Ms. Graham contacted Mr. Roberts' legal assistant to ask for a meeting to discuss the Firm's billings. Several further requests were made over the next several months, but no such meeting occurred. In my view, this review could have been avoided had the Firm been responsive to the Client's requests to discuss the mounting legal fees.
- [21] By letter dated June 7, 2023, Mr. Roberts advised Ms. Graham that the sum of \$2,500 was being written off, as a courtesy, from the Firm's invoice dated June 27, 2022. After deducting the \$2,500, the unpaid balance of invoices dated between June 2022 and May 2023 was \$37,206.91. The Firm applied the partial settlement of \$30,000 received from Mr. Hardy on May 23, 2023 towards payment of those accounts, leaving a balance owing of \$7,206.91.
- [22] Two additional invoices were rendered: one on June 28, 2023, in the amount of \$4,001.06, and one on August 1, 2023, in the amount of \$6,067.53. Those invoices remain unpaid.
- [23] The Client takes specific issue with only five of the Firm's invoices, and has more general issues with the other invoices. Her complaints can be broadly summarized into six categories:
- a) The Lawyer vastly exceeded the fee estimate provided at the outset of the retainer;

- b) An associate, Isaac Shieh ("Mr. Shieh"), spent far more time on this case than he ought to have done, due to inexperience, inadequate oversight by Mr. Roberts, and failing to follow Ms. Graham's instructions;
- c) The Firm spent too much time calculating and recalculating interest, resulting in excessive billable time spent by a paralegal;
- d) Annual increases in hourly rates were excessive and unjustified;
- e) The Firm "misappropriated" trust funds (being the initial \$30,000 paid by Mr. Hardy and applied towards outstanding invoices) without the Client's authorization; and
- f) The Firm failed to discuss fees with the Client despite numerous requests.

Discussion and Legal Principles

- [24] On a review under the LPA, the authorities are clear that the lawyer bears the onus to prove that the work done was necessary and reasonable (see, for example, *Purcell v. McLean*, 2023 BCSC 365, para. 22). In *Cao v. Tsui & Cao Law Corporation*, 2015 BCSC 2072 at para. 24, which involved a review of a lawyer's fees charged under a contingency fee agreement, District Registrar Nielsen (as he then was) reiterated that the lawyer "has the burden of proving what was done, why it was done, the time it took, and why it took the amount of time billed."
- [25] Section 71(2) of the LPA provides that the registrar must allow fees, charges and disbursements reasonably necessary and proper to the conduct of the proceeding, or those authorized by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
- [26] In the course of this analysis, the registrar must consider all the circumstances, including those enumerated in s. 71(4) of the LPA, which provides:
- 71 (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
- (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.

- [27] A review under the LPA is not an accounting-like audit. The Firm is not expected to justify each and every time entry on their invoices, but charges will be disallowed if a lawyer has spent more time on an issue that was reasonably expected by the client or required in the retainer: *Johns, Southward, Glazier, Walton & Margetts LLP v. Massel*, 2017 BCSC 174 at para. 27.
- [28] The authorities on LPA reviews hold that at the end of the day, the registrar "should allow a fair fee commensurate with the work performed in the retainer and taking into account all of the circumstances": *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals dismissed 2022 BCSC 329 and 2023 BCCA 123).
- [29] As all of the circumstances set out in s. 71(4) of the LPA must be considered on a review, I will address each of them, together with the Client's objections.

Considerations pursuant to the Legal Profession Act

(a) the complexity, difficulty or novelty of the issues involved

- [30] The Lawyer says that the issues involved were not legally complex, but were factually complex due to the need to review approximately a year's worth of text messages between Ms. Graham and Mr. Hardy, some of which were no longer in Ms. Graham's possession due to a loss of data when she changed phones. The payments exchanged between the parties had to be verified and dates determined by reference to text records of e-transfers cross-referenced with bank records.
- [31] The Client says that the issues were neither legally nor factually complex, as they involved simple enforcement of the Promissory Note. In this regard, she relies on the Judgment where Sharma J. says, at para. 51, that "this matter is not unduly complex". It is important to note that this comment is in the context of determining suitability for resolution by way of summary trial, and whether the court was able to find the facts necessary to decide the issues. As noted by Mr. Shieh on cross-examination, it is the lawyer's job to present the case in a way that is simple for the judge. In paras. 55-61, Sharma J. canvassed the state of the evidence before her. Her conclusion, in para. 62, is that "resolution of the issue [of Mr. Hardy's personal liability] will have to turn on the text messages made at the time the loans were made".
- [32] I am satisfied that the issues involved were of moderate complexity given the state of the evidence provided by the Client and by Mr. Hardy through discovery.
- (b) the skill, specialized knowledge and responsibility required of the lawyer
- [33] Mr. Roberts testified that he was called to the BC bar in 1991, clerked at the B.C. Supreme Court and, following experience at three other firms, has been with the Firm since 2003. He has a broad general commercial practice including insolvency and debt recovery, including claims similar in nature to that advanced by Ms. Graham. It is undisputed that he has skill and specialized knowledge with respect to the legal issues at hand.

- [34] Mr. Shieh was called to the BC bar in 2014. After his call to the bar, he practiced as a prosecutor in New Jersey from 2014 to 2019, dealing with large criminal conspiracy cases including trafficking and money laundering. He returned to BC and practiced as an associate with the Firm from 2020 to 2023, primarily in the area of corporate commercial litigation.
- (c) the lawyer's character and standing in the profession
- [35] Mr. Roberts, who represented both himself and the Firm and gave evidence at this hearing, made no submissions as to his character and standing in the profession.
- [36] Ms. Graham acknowledges that her colleague would not have recommended Mr. Roberts unless he had good standing in the profession.
- (d) the amount involved
- [37] As indicated previously, the principal amount of the loan was \$158,000. This was a high-risk investment which, by its very nature, was money that Ms. Graham was prepared to lose. Along with high risk comes the potential for a high reward: in this case, interest approaching the statutory maximum of 60%. The task for which the Firm was engaged was to recoup both the principal and interest that Ms. Graham was due. By the time of the summary trial, the total owing pursuant to the Judgment and Supplementary Judgment was over \$500,000.
- (e) the time reasonably spent
- [38] This is the area of greatest contention between the parties. The Client takes issue with what she terms as an inefficient, overcautious approach on the part of the Firm and particularly on the part of Mr. Shieh. She points to four specific areas in which she says the Firm spent excessive time: reviewing text messages, calculating interest rates, drafting pleadings, and following up on discovery requests.
- [39] Mr. Roberts referred to Ms. Graham as a "micromanager" and that she required a greater level of engagement than other clients. Although she disagrees with the term "micromanager", it is clear from the evidence that Ms. Graham was highly engaged in every step of the process, which required additional lawyer time in consulting and communicating with her.

Review of text messages

- [40] Ms. Graham says that Mr. Shieh spent too much time reviewing and re-reviewing text messages and other documents, which she says were not relevant as Sharma J. found that the texts had been replaced by the Promissory Note. As noted previously, Sharma J. found that the text messages were relevant to the issue of Mr. Hardy's personal liability.

- [41] The text messages were also important for other reasons. First, the parties' financial dealings were not limited to the loans in issue. Funds were transferred between them for other reasons, and the text messages provided some evidence of the purpose of each transaction.
- [42] The text messages also evidenced the nature of the relationship between Ms. Graham and Mr. Hardy. To rebut the defendant's argument that the court should sever any illegal interest rate and disallow interest entirely, Ms. Graham had to establish that she was not a predatory lender and that the parties were in relatively equal bargaining positions. In determining that severance was inappropriate, Sharma J. referenced, among other factors, "evidence in which they discussed terms and made changes to suit them both" (Judgment, para. 91). That evidence included text messages.
- [43] The text messages were reviewed when initially provided by the Client, and again in preparation for discoveries and in preparation of the summary trial application. As noted earlier, the Client did not have all of the text messages due to a data loss, so some of the text messages were obtained from Mr. Hardy during the discovery process. Those text messages had to be reviewed and reconciled with those provided by the Client.
- [44] Overall, the time spent reviewing text messages was reasonably spent.

Interest calculations

- [45] The Client also takes issue with the amount of time spent by various members of the Firm in addressing interest rate calculations at the outset of the retainer and in preparation for the summary trial application.
- [46] The loan arrangements between the parties were informal, and did not specify an effective annual interest rate [EAIR]. Calculation of the EAIR was necessary to determine whether the parties' agreement reflected a criminal rate of interest and thus offended s. 347 of the Criminal Code.
- [47] Initially, the paralegal calculated the EAIR reflected in the Promissory Note on the basis of monthly compounding interest as instructed by Mr. Shieh. This calculation formed the basis of the Firm's initial opinion, expressed in the First Memorandum, that the EAIR for each of the loans reflected in the Promissory Note was below 60% and therefore legal and enforceable.
- [48] Mr. Shieh's evidence is that upon further review of current case law, it became clear that the methodology used by the paralegal in the initial interest rate calculations did not accord with the case law regarding calculation of the EAIR.
- [49] On Mr. Shieh's instructions, the paralegal then recalculated the EAIR at simple annual interest. The Firm's revised opinion, expressed in the Second Memorandum, was that the EAIR for two of the loans exceeded 60% and interest for those loans was therefore illegal and unenforceable.

- [50] The evidence provided by the Firm's witnesses, Mr. Shieh and Mr. Roberts, did not adequately explain the reason for using compound interest in the first set of calculations. When asked on cross-examination whether the paralegal was required to redo the calculations because the Firm was unclear on the law, Mr. Shieh's response was that the Firm was not unclear on the law, but that their "initial methodology was not correct under the prevailing law at the time". That is a distinction without a difference. This is not a situation where recent case authority changed the legal landscape with respect to calculation of an illegal interest rate. The case referred to in the Second Memorandum as authority for calculating an EAIR using simple rather than compounding interest is *Terracan Capital Corp. v. Pine Projects Ltd.*, [1991] B.C.J. No 3256 (S.C.), *aff'd* [1993] B.C.J. No. 203 (C.A.).
- [51] The Firm ought to have been aware, prior to providing its initial opinion to the Client, that simple rather than compound interest should be used in calculating the EAIR for the purpose of s. 347 of the Criminal Code. The need for a second set of calculations and the Second Memorandum was due to the Firm's oversight, and ought not have been billed to the Client. In this regard, as it is not possible to undertake a more detailed calculation, fees in the amount of \$4,000 will be disallowed.
- [52] As the Firm was preparing the summary trial application, the paralegal was instructed to recalculate interest a number of times as further documents showing the dates that funds were transferred were being disclosed iteratively by Lifeguard's counsel. Ms. Graham's position at the summary trial was that the EAIR should be calculated based on when the money was actually advanced. Using this methodology, a difference of just a few days in the dates that funds were advanced could have meant the difference between an EAIR of over or under the 60% threshold. Ultimately, this methodology was rejected by Sharma J. in favour of the dates set out in the Promissory Note. Nonetheless, those calculations were necessary in order for the Firm to be prepared for all of the options available to the trial judge.
- [53] Aside from the \$4,000 reduction, time spent on interest calculations was reasonably spent.

Drafting pleadings

- [54] The Client complains that it should not have taken Mr. Shieh as long as it did to draft the Notice of Civil Claim, as three pages were "boilerplate" and the rest was fairly simple. The invoice dated June 28, 2021 shows time spent by Mr. Shieh on several dates in May 2021. That time included not only actual drafting time but also review of case law on notional severance and reduction of illegal interest rates, discussing the draft pleading with Mr. Roberts, some back and forth communications with the Client regarding her requested changes, further consultation with Mr. Roberts and redrafting. The invoice reflects 14.3 hours of Mr. Shieh's time, which is not unreasonable for the work performed.

Discovery

- [55] The Client complains that the Firm requested that she provide excessive document discovery, and also that they spent too much time following up on the 19 requests left on the record at the examination for discovery of Mr. Hardy. She says that this demonstrated an overcautious approach and resulted in time unreasonably spent.
- [56] The Client initially provided selected documents and text messages that she felt were relevant to her case. In requesting further documents from the Client, Mr. Shieh correctly explained a litigant's broad document discovery obligations under the Supreme Court Civil Rules. Although Ms. Graham was concerned about the time it would take the Firm to review the documents they requested from her, this is a necessary part of litigation. It is the lawyer's task to review and determine which documents are relevant. Mr. Roberts' evidence, supported by the invoices, is that he billed none of his own time during this process despite being involved throughout in giving direction to Mr. Shieh. The document requests and the time spent reviewing the Client's documents were generally reasonable.
- [57] Regarding the requests arising from Mr. Hardy's discovery, given the manner in which documents were being produced by the defendant, the Firm was following up appropriately to ensure that it had all of the documents it required for the intended summary trial application. This time was reasonably spent.
- (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable
- [58] The Retainer Agreement provided that Mr. Roberts' hourly rate was \$600. It also provided that the hourly rate of the associate who was initially expected to work on the file was \$350, and that paralegal time would be charged at an hourly rate of \$175-\$235. Shortly thereafter, Mr. Roberts determined that a different associate at the Firm, Isaac Shieh, would be more suitable. Mr. Shieh's hourly rate was also \$350.
- [59] The Retainer Agreement also says "We may also engage other lawyers and personnel within the Firm to assist us in providing you with legal advice and services in a timely and efficient manner. Their hourly rates will be within the general range of the rates quoted for the key lawyers and personnel. As indicated in the Terms of Engagement, we review our fee rates annually, and any adjustments will be reflected in our accounts."
- [60] The Terms of Engagement document says the following with respect to increases in hourly rates: "Our billing rates are reviewed from time to time, and are generally revised annually to reflect levels of legal experience, changes in overhead and salary costs, and other market factors. Use of revised billing rates to set fees on any account will constitute notice to you of those revisions."

- [61] In 2022, Mr. Roberts' hourly rate increased to \$650 and Mr. Shieh's hourly rate increased to \$410. The paralegal's rate remained within the range initially quoted. Despite having an effective date of January 1, 2022, those increases were not communicated to the Client until April 28, 2022, when the Firm sent their invoice for services rendered for the period January 1 to March 31, 2022.
- [62] In 2023, Mr. Roberts' hourly rate increased to \$695. Once again, that increase was only communicated to the Client on March 3, 2023 when the Firm sent her its invoice dated February 27, 2023 for services rendered from December 1, 2022 to January 31, 2023.
- [63] The Client takes no issue with the hourly rates specified in the Retainer Agreement, but does object to the annual increases which she says were unjustified and imposed without prior notice to her. Her evidence, although not communicated to the Firm at the time, is that one of the reasons she stopped paying the monthly invoices in 2022 was because she did not want to be deemed to have accepted the higher hourly rates.
- [64] Although the Terms of Engagement provided that the hourly rates might increase from time to time, Ms. Graham was not notified of those rate changes until some months after the fact, after additional services had been provided at higher rates. The Client was entitled to advance notice that the Firm's hourly rates were increasing, so that she would have had an opportunity to question or negotiate the increases, or make an informed decision as to whether to continue the retainer: *Owen Bird Law Corp. v. Patterson*, 2014 BCSC 553; *Richard Fayerman Law Corporation v. Lin*, 2025 BCSC 165.
- [65] Although the Client may not have been happy with the rate increases, it is undisputed that she never instructed the Firm to stop working on her case. She did request a meeting to discuss the billings, as will be discussed below.
- [66] I find that the Firm was not entitled to charge the Client higher hourly rates until after they had provided reasonable notice of the new rates. I also find, given the Client's inaction, that the Client was deemed to have accepted the higher rates after she was given reasonable notice. As a sophisticated businessperson, and considering the stage of proceedings at the time if the fee increases, I consider one month to be reasonable notice.
- [67] Accordingly, the fees billed by the Firm will be reduced by \$4,724.73[1], inclusive of taxes, to account for a reduction in the hourly rates billed by Mr. Roberts and Mr. Shieh until one month after notice of increased fees was given to the Client.
- (g) the importance of the matter to the client whose bill is being reviewed
- [68] Separate and apart from the amount in issue, which the Client testified she could afford to lose, there was some level of non-financial importance to the Client.
- [69] Ms. Graham testified that the case was important to her from a right vs. wrong perspective. She said that she doesn't like injustice, and Mr. Hardy's texts were full of appreciation for her assistance, and then he "flipfopped" and that didn't sit well with her. Ms. Graham's evidence

was that she spent considerable time and energy providing pro bono mentorship to Mr. Hardy, including connecting him with other business advisors, and then he turned on her. Many of Ms. Graham's communications with the Firm emphasized her view that she was the "good guy" in this case, and deserved to be repaid according to the terms that the parties had negotiated.

[70] It is clear from the tone of the communications in evidence that this case was important to Ms. Graham for more than financial reasons.

(h) the result obtained

[71] The result obtained in this court was the best that the Client could possibly have hoped for: judgment against both Lifeguard and Mr. Hardy, with interest read down to the statutory maximum of 60%.

[72] The Client's only complaint with respect to the result was in terms of the Firm's work in securing collection of the judgment debt. After the successful summary trial decision, Mr. Roberts referred the collections aspect of the case to another lawyer at the Firm, Noor Mann ("Mr. Mann"). Rather than pursuing garnishment, Mr. Mann negotiated a payment schedule which was incorporated into a consent order. That payment schedule was provided for instalment payments over the course of a year.

[73] Although the Client's evidence was that Mr. Hardy defaulted after the first four payments, the Firm was no longer retained at that point and was not involved in further collection efforts.

[74] Overall, the result obtained by the Firm with respect to the Judgment and Supplemental Judgment was a good one.

Fee estimate

[75] Consideration of "all of the circumstances" also includes consideration of any fee estimate given.

[76] Non-binding estimates or informal discussions about likely cost may be taken into account when considering "all of the circumstances": *MacLean Law v. Miolla*, 2016 BCSC 1647 at para. 60.

[77] The Lawyer's evidence is that he has no recollection or note of providing a fee estimate to the Client in this case. He says that he rarely if ever gives an estimate, if he does so it is always a range rather than a specific figure. He says he has reviewed his notes of calls and discussions with Ms. Graham and email exchanges with her and in none of them is there any notation by him that he provided or that the Client asked for an estimate of costs.

[78] The Firm's Terms of Engagement explicitly state that any estimate that may be provided is preliminary only and not to be regarded as a maximum or fixed fee quotation.

- [79] The Client's evidence is that she distinctly recalls Mr. Roberts giving her an initial verbal estimate of \$15,000. The reason that she recalls the amount is that the collection agency she dealt with prior to retaining the Firm had quoted her \$50,000 for litigation, and she recalls clarifying with Mr. Roberts that his estimate was "1-5 not 5-0". In her emails to the Firm expressing concern with the mounting legal bills, she has referred to the \$15,000 estimate many times.
- [80] On cross-examination, when asked if she has made a note of the estimate given, Ms. Graham acknowledged that "I probably do have notes buried somewhere". No such notes were produced despite the Client being aware, at least since January 2024, that the Lawyer disputes her claim of a fee estimate being given.
- [81] On balance, given the evidence before me, I agree with Mr. Roberts that it is highly improbable that a lawyer with his experience would ever have told Ms. Graham that prosecution of her claim from start to finish would have cost \$15,000. That is an extremely low and unrealistic estimate given the history of dealings between the parties.
- [82] The Client communicated the following to the Firm in an email dated May 25, 2023, during the enforcement phase of the retainer:

To be clear, it has never been my intention to try to "cap costs" or bind you to an initial estimate, I completely understand and appreciate the uncertainty of the work to be done. I believe it is entirely reasonable to question how 7-fold 'surprise' costs could occur without consultation, after you had confirmed that you "had everything you needed" from the Discovery process.

Rest assured that in this matter I have always been, and will remain, 'the good guy'.

- [83] There is a positive obligation on a lawyer to keep a client apprised of the cost of the proceedings: *Josephson Angus Barristers v. 662470 B.C. Ltd.*, 2011 BCSC 749 at para. 50. The Firm did exactly that by sending monthly invoices to the Client for the work performed in the prior month. It is undisputed that the Client never instructed the Firm to pause or stop working on her case, which she could have done at any point.

Fee review requests

- [84] What the Client did do, repeatedly, was to request a meeting with Mr. Roberts or the Firm's managing partner to discuss the fees. No such meeting happened, and the Firm terminated the retainer in August 2023.

- [85] The Client relies on the Terms of Engagement which says in part:

If you have any questions or concerns respecting our accounts, please feel free to discuss the issues with the primary contact lawyer or with our Managing Partner. We are generally able to resolve any concerns relating to our accounts to the satisfaction of both sides, with little inconvenience or formality.

- [86] It then goes on to advise the client of their right to request a review or taxation by the court.
- [87] Neither party has provided any authority as to whether a failure to respond to a client's request for a fee review is (or is not) an appropriate consideration on an LPA review.
- [88] Section 71(2) of the LPA provides that the registrar must allow fees, charges and disbursements reasonably necessary and proper to the conduct of the proceeding, or those authorized by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
- [89] In my view, the mandatory language of s. 71(2) of the LPA does not allow room for discretion to reduce a lawyer's bill on account of a failure to respond to the client's request to review fees.

Alleged misappropriation of trust funds

- [90] The Client strenuously objected to the Firm applying Mr. Hardy's initial \$30,000 payment on her judgment towards the Firm's outstanding invoices. At that point, she had not received any payment from Mr. Hardy in several years.
- [91] The retainer agreement and Terms of Engagement do not specifically reference how the Firm may apply settlement funds it receives on behalf of a client.
- [92] Section 3.6-10 of the Law Society of B.C.'s Code of Professional Conduct provides:
- A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees, except as permitted by the governing legislation.
- [93] Whether the Firm misappropriated trust funds held for the Client is a question to be determined by the Law Society, and is not a factor on this review.

Result

- [94] As set out above, based on the factors under s. 71(4) of the LPA, I find that the Firm is entitled to the fees billed, less the sums of \$4,000 as noted in para. 51 and \$4,724.73 as noted in para. 67, for a total reduction of \$8,724.73.
- [95] This amount will be deducted from the unpaid amount (\$17,275.50), leaving a balance owing by the Client of \$8,550.77.
- [96] The Firm is also entitled to interest on the amount allowed, exclusive of costs, at the contractual rate of 12%: LPA, s. 73(3).
- [97] With respect to the costs of the LPA review, s. 72(1) of the LPA provides that the costs of an LPA review must be paid by the lawyer whose bill is reviewed "if 1/6th or more of the total amount of the bill is subtracted from it", or by the client "if less than 1/6th of the total amount of the bill is subtracted from it".

- [98] The amount by which I have reduced the bills under review is less than 1/6th of the total amount. Pursuant to s. 72(1) of the LPA, the Firm is entitled to its costs of this review unless, pursuant to s. 72(2) of the LPA, I determine that special circumstances exist which warrant a different costs award.
- [99] At the conclusion of the hearing, the parties advised that offers to settle had been exchanged. If either party wishes to seek a different costs award, they have leave to file brief written submissions within 30 days from the date of this decision. Those written submissions are not to exceed 5 pages, exclusive of any attached offers, and are to be submitted through Supreme Court Scheduling. If neither party submits written submissions within 30 days, I will assess costs summarily on the basis of Appendix B of the Supreme Court Civil Rules and advise the parties accordingly.

"Associate Judge Hughes"

Schedule A

- [1] Calculation attached as Schedule A

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Prepared on 26 October 2026 · Esheria