

CANADA / JUDGMENT

Granville Law Group v. Bayko

2020 BCSC 1547

COURT

Supreme Court of British Columbia

DECIDED

23 September 2020

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

2020 BCSC 1547 Granville Law Group v. Bayko

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Granville Law Group v. Bayko,

2020 BCSC 1547

Date: 20200923

Docket: S195570

Registry: Vancouver

In the Matter of Section 70 of the Legal Profession Act,

S.B.C. 1998 C. 9

Between:

Granville Law Group

Solicitor

And

Cynthia Stella Bayko

Client

Before: Registrar Nielsen

Oral Reasons for Decision

In Chambers

Counsel for Solicitors:

C.L. Anderson

Appearing on own behalf:

C. Bayko

Place and Date of Hearing:

Vancouver, B.C.

November 1 and 12, 2019,

July 3, 2020 and

September 23, 2020

Place and Date of Decision:

Vancouver, B.C.

September 23, 2020

Introduction

- [1] This is a lawyer-initiated review pursuant to the Legal Profession Act of British Columbia, 1998, c. 9, seeking to obtain a certificate for fees for legal work performed but not paid. The lawyer originally sought the payment of three bills dated July 4, 2018, in the amount of 1,760.15; September 2, 2018, in the amount of 34,541.10; and March 28, 2019, in the amount of 16,077.63, for a total claim of 52,378.73.
- [2] After the filing of the appointment for review, the lawyer agreed to a reduction of his bill so that the claim now totals \$46,980.48 in fees, charges, and disbursements for the three bills in issue.
- [3] At this review, the lawyer, the client, and the client's cousin and childhood friend, Ms. Murray, provided oral evidence. In addition, affidavits have been filed by the lawyer in the proceeding, and Mr. J. Roberts Q.C. provided an expert opinion in affidavit format, sworn November 27, 2019, and filed December 6, 2019.

Background

- [4] The lawyer was first consulted by the client in June of 2018 regarding two lawsuits involving the estate of her late mother who died September 28, 2011. The client's late mother had been a real estate sales person.

- [5] The first lawsuit concerned a joint bank account with the client's deceased mother at Vancity Savings Credit Union containing funds in the neighbourhood of 3,215,000, which was frozen. The second lawsuit concerned two properties owned by the client's deceased mother, a farm in Langley, which was worth roughly \$5 million dollars, and a home in Burnaby, which had sold for \$6.7 million dollars and netted approximately \$4.3 million dollars.
- [6] The client wanted the Vancity account unfrozen and a default judgment against the farm property removed.
- [7] A retainer agreement was executed between the lawyer and the client, which provided for an hourly rate of \$300 and a provision that this rate would not be increased except with 30 days' advance written notice. His assistant had entered the lawyer's rate of \$300 per hour into the retainer agreement in error. The lawyer's actual hourly rate at the time was \$350.
- [8] The client had been living abroad in Australia when her mother first became ill with cancer. She returned to Canada off and on between 2009 and 2011 to assist her mother. The client eventually moved to Canada permanently in 2011 to care for her mother as she battled cancer. Her mother's diagnosis in 2011 was such that her condition was terminal.
- [9] The client had two siblings, a sister and a brother. The client's mother had executed a Will dated January 27, 1997, in which the client and her sister were to equally share in the proceeds of the Burnaby property and the client and her sister and brother would share the residue of the estate in three equal shares.
- [10] On August 6, 2011, shortly before her death, the client's mother is alleged to have executed a Will, which left virtually her entire estate to the client, making no provision for the client's brother or sister. This was essentially the nexus of the dispute between the client and her siblings and the cause of the litigation for which the lawyer was retained.
- [11] Efforts were made to prove the validity of the August 2011 Will; however, those efforts failed in the face of the Will not having been properly witnessed and there being expert evidence to suggest the client's mother did not have capacity at the time the 2011 Will was executed.
- [12] A trial to resolve the issues was scheduled to commence September 10, 2018, for 15 days. The parties agreed to a mediation in the hope of resolving the issues. The mediation took place on August 20, 2018, with Ms. Sandra Ballance, a retired Supreme Court Judge, as mediator. The mediation commenced at 9:30 a.m. and went until 1:30 a.m. the next morning. Although the matter was settled at 11:00 p.m. that evening, it took another two and a half hours to put the agreement into written format.
- [13] Ultimately, the matter was settled at mediation on the basis that the 1997 Will was valid, not the 2011 Will, and the estate would be distributed essentially on that basis.

- [14] Other peripheral issues were resolved in principle, such as the client's sister returning the guest book from her mother's celebration of life to the client. The minutes of settlement lists the final terms of settlement which were agreed to by the client, as evidenced by her signature.
- [15] Shortly after the mediation, the client had settlement remorse. She believes that she was not well served at the mediation and received no benefit from the terms of settlement. She also submits that some of the settlement terms, to her benefit, have not been enforced. By way of example, she did not receive the guest book from her mother's celebration of life and has not received the \$100,000 balance in the Vancity account. There is still a charge registered against her farm property and she has not yet received her share of the sale of the proceeds from the Burnaby property.
- [16] The client also believes that the agreed-upon sum of \$1.995 million payable to each of her siblings as part of the settlement was mathematically incorrect and should have been less.
- [17] The cash payment to the client's siblings was the result of a mediated agreement whereby the client was able to keep the farm property.
- [18] Shortly after the mediation, the solicitor-client relationship began to deteriorate. The client was difficult to contact, as she would not use her computer or cellphone, believing both to have been hacked. The client also believed her sister was stealing her documents and someone was stalking her.
- [19] The client experienced a level of distress to the point that it severely affected her health. During this time period, the lawyer continued to act for the client, but this became increasingly difficult given the client's views, and her inaccessibility.
- [20] On September 10, 2018, the parties appeared before Mr. Justice Bowden, resulting in multiple orders being made, including;
- 1) Pronouncing the validity of the Will;
 - 2) Appointing Mr. Ibbot as Administrator with Will annexed;
 - 3) Directing payment of the Vancity funds as agreed at mediation; and
 - 4) Setting aside the Administrator's default judgement against the client.
- [21] The lawyer submits that he achieved the main goal of the client, which was that she kept the farm property, which was already registered in her name. The lawyer also submits the client's pre-mediation legal position was tenuous, and references the fact that during the mediation, the mediator expressed the opinion that the client had a very real risk of losing the farm in the event the matter proceeded to trial. The lawyer further submits that the remaining terms of the settlement agreement await the resolution of the estate by the administrator who is legally obliged to give full effect to it.

Legal Principles

[22] Pursuant to s. 71(2)(a) and (b) of the Legal Profession Act, the registrar must, subject to subsections (4) and (5), allow fees, charges, and disbursements for those reasonably necessary and proper to the conduct of the proceeding or business to which they relate, and those authorized by the client or subsequently approved by the client, whether or not the service was reasonably necessary and proper to the conduct of the proceeding or business to which they relate.

[23] Sections 71(4) and (5) of the LPA provide:

- (4) . . . 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.

And finally subsection (5) provides that:

- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

[24] I have the benefit of the views of Mr. Peter Roberts Q.C. in his affidavit filed December 6, 2019, and for the reasons that follow, we are substantially in agreement on many of the major points. The affidavit was accepted into evidence pursuant to SCCR 14-1(32).

Application of the Principles

- (a) the complexity, difficulty or novelty of the issues involved and (b) the skill, specialized knowledge and responsibility required of the lawyer

[25] Considering the factors enumerated in (a) and (b), that is the complexity, difficulty, novelty of the issues involved, and the skill, specialized knowledge, and responsibility required of the lawyer, arising in the estate, I would characterize them as unusual and somewhat complex. The lawyer had to come up to speed with all the events that had occurred leading up to his retainer in order to act at the mediation. The creation of the 2011 Will, only a month before the client's mother's death, the problems surrounding its execution, including

the non-presence of a witness at the time of its execution, and the client's mother's alleged lack of capacity, all gave rise to a layer of complexity. There was also the client's use of the money in the joint account with her mother, which was eventually frozen. A case of this nature required a degree of skill and specialized knowledge in estate matters.

(c) The lawyer's character and standing in the profession

[26] As in most cases involving a review under the Legal Profession Act, I find this factor not to be relevant in the context of this review.

(d) The amount involved

[27] The amount involved was substantial. The Vancity account contained approximately \$3.4 million dollars, the Burnaby home resulted in a net return of \$4.3 million dollars, and the farm property had a value of roughly \$5 million dollars. A considerable amount of money was at stake.

(e) The time reasonably spent

[28] For the most part, I find the time billed was reasonable in the context of the case. There is a September billing entry, which references time billed for reviewing a draft account and accompanying letter to the client. There is well-established principles that lawyers cannot bill for efforts to settle accounts.

[29] In *Re Webb* (1894), 1 C.H. 73 at page 87(C.A.), the court stated no allowance should be made by lawyers for attendances on themselves to pay their own fees and things of that kind. That principle goes back over 100 years and it has been applied in more recent cases, see *Shagoras Enterprises Ltd. v. Lindsay Kenney*, 2008 BCSC 950 at paragraph 171, and also *Re Krahn*, 2014 BCSC 2000 [sic - 2003] at paragraph 62. This requires an adjustment to the bill.

[30] In my view, the efforts surrounding the return of the guestbook also require an adjustment to the bill. The lawyer testified he prepared an application and affidavit in support of an order to obtain the guestbook, but the client did not attend to swear the affidavit and therefore the application, although perfected, was never made. This was, in part, due to the difficulty the lawyer encountered in contacting and engaging the client.

[31] After further inquiries by the lawyer, it was discovered that the client's sister had allegedly lost the guestbook and it was therefore unrecoverable. Ultimately, the efforts in this regard brought no benefit to the client. With the benefit of hindsight, the mediation minutes and terms of settlement could have provided more certainty in this regard given the client's concern with the guest book.

[32] In the retainer agreement, the lawyer agreed in writing that his hourly rate would be \$300 and this rate would not be changed, except on 30 days' written notice to the client. No written notice was provided to the client, but the lawyer's rate was billed at the \$350 per hour. The lawyer testified this was simply a billing error, at least for the first two bills.

- [33] The lawyer reduced his hourly rate to \$300 as provided in the retainer agreement for his July and September 2018 bills. However, he did so subsequent to the filing of the appointment for review. He did not reduce his rate on the final March 28, 2019 bill, on the basis that the previous bills constituted 30 days' notice of his increased rate.
- [34] I do not agree. Given the language of the retainer agreement, an increase required 30 days' notice. The term "notice" required specific notice of a rate increase, not just a subsequent bill sent to the client's attention at the increased rate. In my view, proper notice did not occur in this case.
- (g) The importance of the matter to the client whose bill is being reviewed
- [35] The matter at hand is of extreme importance to the client. She lives off the interest generated by the inheritance from her mother. It is her sole source of income. The client was also emotionally connected to the guestbook from her mother's celebration of life and regretfully that appears to be have been lost.
- (h) The result obtained
- [36] The client is of the view that she did not achieve any positive result from the lawyer's efforts. I do not agree, and I also have the views of Mr. Roberts, Q.C., in his affidavit filed December 6, 2019, which provides a concurring opinion.
- [37] The client obtained the farm exclusively. She will share in half the sale proceeds of the Burnaby property once the necessary tax documents from the Canada Revenue Agency are obtained and the estate can be disbursed and finalized. When the estate is ultimately wound up, the administrator is legally obliged to give full effect to all the terms of the settlement agreement. The client is further entitled to the balance of the Vancity account, which is approximately \$100,000. However, before receiving this money, she will have to agree to a dismissal of her action against Vancity for freezing the account. Until she does so, Vancity will not release the funds.
- [38] The client takes issue with how the final payment of 1.995 million to each of her siblings was calculated. The lawyer, in two pieces of correspondence, explained the calculation to her in detail. This amount was agreed to by her in order to reach a settlement. However, the lawyer was unable to explain a \$40,000 discrepancy in the calculation. The lawyer's correspondence of February 8, 2019, refers to how the 1.955 amount was reached, but not the final figure of 1.995.
- [39] The settlement, which took from 9:30 a.m. to 11:00 p.m. to reach, required a further 2.5 hours to put into writing. In total, the parties spent from 9:30 in the morning to 1:30 the next morning in order to finalize the entire matter.

- [40] When the client tries to rationalize the figure of 1.995 million per sibling, she cannot mathematically reconcile the numbers. However, settlements for round figures are often the result of bargaining. Reaching a final settlement often requires compromises for a number of reasons that may not seem logical to a particular party. The critical fact is that the client reviewed the settlement figure of 1.995 million per sibling, as evidenced by her signature on the minutes of settlement.

Disposition

- [41] In my view, the accounts of the lawyer must be reduced for several reasons. First, the retainer agreement provided for an hourly rate of 300 an hour, not 350. Proper written notice of a change in the hourly rate was not provided. The lawyer consented to a partial reduction from 350 per hour to 300 per hour on the first two bills; however, this concession was made after the filing of the appointment and immediately prior to the review.
- [42] The lawyer took the position that the last bill did not need a reduction, as the client would be aware of his rate within the 30 days provided, given the \$350 per hour rate specified on the prior two bills.
- [43] I do not agree. Proper notice under the retainer agreement required 30 days' written notice of the increase in the hourly rate. This requires bringing the increased hourly rate specifically to the client's attention. Referring to a prior bill with the incorrect hourly rate falls short of this written requirement.
- [44] Second, billed efforts were made to obtain the guestbook to no avail. The guestbook was important to the client and the efforts surrounding its attempted return produced no positive result for the client. This added expense may have been avoided if more detail regarding its return had been provided for in the terms of settlement.
- [45] Third, there is billed time for reviewing draft accounts of the client and preparing an enclosed letter to her. As stated above, clients cannot be billed for efforts to resolve accounts.
- [46] Finally, there is the \$40,000 discrepancy in the final settlement figure of 1.995 million to each sibling in the settlement minutes, as opposed to the 1.955 million referred to in the letter of February 8, 2019. This unexplained accounting has caused a great deal of concern to the client. The client, as evidenced by her signature, did agree to settlement in the amount of 1.995 million per sibling. However, the lack of an exact mathematical calculation or explanation is understandably concerning. Despite the marathon settlement process, the final settlement amounts should have been properly accounted for and explained.
- [47] There is no issue concerning the lawyer's disbursements.
- [48] Considering all the circumstances, the lawyer will have fees, disbursements, and taxes in the total amount of \$37,000, which I consider to be fair in all the circumstances.

- [49] In addition to that amount, the lawyer will have interest on that amount at a rate of 12 percent per annum, as provided by the retainer agreement, from March 28, 2019, to today's date, September 23, 2020.
- [50] The original claim was for 52,378.73, before the calculation of interest. This amounts to a reduction in the bill by more than 1/6. Pursuant to s. 72 of the Legal Profession Act, when a bill is reduced by more than 1/6, the client is ordinarily entitled to the costs of the review unless there are special circumstances.
- [51] I find there are special circumstances in the present case. The lawyer subsequently reduced his claim for fees after the filing of the appointment for review in the face of the written objection to the accounts, and before the review commenced. This consensual reduction was appropriate and reasonable in the circumstances. Further, the lawyer has had considerable difficulty in bringing this matter on for a hearing. The client was initially unresponsive, necessitating an application for substituted service, and the client has had difficulties during the course of this review, which have prolonged the hearing.
- [52] I acknowledge the client was visibly under considerable stress, and had difficulty navigating the process. However, in all the circumstances, both parties will bear their own costs.
- [53] A certificate of fees can be submitted through the registry for my signature. I will require the interest calculations to accompany the certificate for my review. The client's signature is dispensed with.

"Registrar Nielsen"

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/20/15/2020BCSC1547.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/granville-law-group-v-bayko-2020>

Prepared on 24 October 2026 · Esheria