

CANADA / JUDGMENT

Koftinoff v. Harding

2025 BCCA 321

COURT

British Columbia Court of Appeal

DECIDED

13 May 2025

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2025 BCCA 321 Koftinoff v. Harding

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Koftinoff v. Harding,

2025 BCCA 321

Date: 20250513

Docket: CA49874

Between:

Joseph Koftinoff

Appellant

(Plaintiff)

And

Thomas Harding

Respondent

(Defendant)

Before:

The Honourable Mr. Justice Willcock

The Honourable Justice Donegan

The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia, dated

April 24, 2024 (Koftinoff v. Harding, New Westminster Docket S245828).

Oral Reasons for Judgment

The Appellant, appearing in person

(via teleconference on May 13, 2025):

J. Koftinoff

The Respondent, appearing in person

(via videoconference on May 13, 2025):

T. Harding

Place and Date of Hearing:

Vancouver, British Columbia

May 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia

May 13, 2025

Summary:

Bills rendered by a solicitor to his client were reviewed by the registrar pursuant to the Legal Professions Act and significantly reduced. The Client appealed the registrar's decision to the trial court. His appeal was dismissed. He appeals the order dismissing his appeal. Held: Appeal dismissed. On his appeal to the trial court, the client made out no reviewable error on the part of the registrar. In this Court, he has not demonstrated error on the part of the judge who heard the appeal from the registrar. Most of the errors the Client enumerates relate to the assessment of the evidence by the registrar. Neither the reviewing judge nor this Court are in the privileged position occupied by the registrar. The reviewing judge, quite properly, took a deferential approach to the registrar's findings and made no error.

- [1] WILLCOCK J.A.: Mr. Koftinoff (the "Client") takes issue with legal fees and disbursements billed to him by his former lawyer, Thomas Harding (the "Lawyer"), in relation to two actions: a motor vehicle accident claim; and a tort claim founded upon an allegation of assault. The bills in question were reviewed pursuant to the Legal Profession Act, S.B.C. 1998, c. 9 by Registrar Gaily and reduced from a total of \$54,155.13 to \$20,000, less costs of the taxation set at \$1,232.
- [2] The registrar's reasons are indexed at 2024 BCSC 107.
- [3] Unhappy with the result of the review, the Client appealed that decision to the British Columbia Supreme Court. His appeal was dismissed by Justice Girn.

- [4] The registrar's reasons are comprehensive. She found:
- a) In August 2015, the Lawyer was retained on terms set out in a contingency fee agreement in respect of both actions.
 - b) By the end of August 2019, the solicitor-client relationship was irreparable (in part as a result of abusive exchanges between client, staff and counsel).
 - c) On June 23, 2020, the Lawyer served notices of intention to withdraw as counsel on the Client.
 - d) On June 25, 2020, the Lawyer delivered a set of "pre-bills" to the Client on which the amount owing on the motor vehicle accident action was shown as \$15,972.54, and the amount owing on the tort action was shown as \$9,442.04 (both amounts include fees, disbursements and applicable taxes).
 - e) On July 7, 2020, notices of withdrawal were filed.
 - f) The contingency fee agreement contemplated that on its termination the Client would pay the Lawyer a "fee based upon the reasonable value of services performed to date" upon "presentation of [the] account".
 - g) On May 9, 2022, nearly two years after he had terminated the contingency fee agreement, the Lawyer issued a second set of pre-bills to the Client on which the amount owing on the motor vehicle accident action was shown as \$31,068.15 and the amount owing on the tort action was shown as \$11,704.44. Like the first pre-bills these bills had the word "sample" printed beside the invoice number.
 - h) On May 10, 2022, the Lawyer issued two bills, as that term is defined in the Act to the Client seeking \$36,937.62 (inclusive of fees, disbursements and applicable taxes) for his work on the motor vehicle accident action, and \$17,217.51 (also inclusive of fees, disbursements and applicable taxes) for his work on the tort action.
- [5] The registrar addressed the Client's submission he signed the contingency fee agreement under duress as follows:
- [20] The Client, who bears the onus to prove he signed the [contingency fee agreement ("CFA")] under duress, did not tender any independent evidence to corroborate his version of the events, neither did Mr. Harding. Copies of the CFA were exhibited to both the Harding Affidavit #2 (Ex. 1, pp. 4-14) and to the Client Affidavit #1 (Ex. I). The CFA exhibited to the Client Affidavit #1 is not dated and is signed only by the Client; the CFA exhibited to the Harding Affidavit #2 is signed by both parties and dated August 6, 2015. The terms of both are exactly the same. Neither the Client nor Mr. Harding had evidence confirming the date the Client first attended at Mr. Harding's office. The evidence before me at the LPA review does not satisfy me that the Client signed the CFA under duress.
- [6] She described the Client's position with respect to the bills as follows:

- [60] The Client's position is that he should not have to pay Mr. Harding anything and that the 2022 Bills should be reduced to \$0. The Client asserts that over the course of the retainer, Mr. Harding and his staff failed to communicate with him or discuss with him the steps they were taking to pursue the Actions, and would not respond to his emails and phone calls. He maintains that Mr. Harding "did nothing" for him and any work moving the Actions forward was based on the work of his previous counsel on the MV Action. The Client is clearly aggrieved by Mr. Harding's withdrawal and termination of the CPA; he was emotional and angry at Mr. Harding during the LPA review, maintaining that Mr. Harding had breached the Client's trust, which included going so far as to unnecessarily call the police to remove the Client from his office.
- [7] She rejected the Client's argument that the 2020 pre-bills, rather than the final 2022 bills should be reviewed, because the former had not been issued as required by the Act. She held:
- [64] The 2020 Pre-Bills do not meet the requirements for bills under s. 69(3) of the LPA because they are not signed by Mr. Harding, or accompanied by a letter signed by him or on his behalf (as I understand it, the 2020 Pre-Bills were provided to the Client when he attended at Mr. Harding's office a day or two after Mr. Harding had terminated the CFA).
- [8] However, the registrar did consider the pre-bills to be evidence of the work performed by the Lawyer and his firm.
- [9] She rejected the submission the Lawyer terminated the contingency fee agreement without cause for the following reason:
- [74] In this case, the parties agree that the May 2019 Email was sent in response to what can be described as the Client's confrontational meeting with Ms. Maisonville. As evidenced in the emails reproduced above, it is clear that the Client had lost confidence in Mr. Harding's representation of him by the end of August 2019, asserting to Ms. Welder that Mr. Harding had "jeopardized and compromised" his case, and that he had been lied to and treated poorly by Mr. Harding and his staff. In my view, by this point, the parties' solicitor-client relationship had broken down to the point it was irreparable and its termination was justified by either the Client or Mr. Harding, following *Green v. Richter* Law. What surprises me is that the Client did not press the termination of the CFA at that point (after requesting his file and the fees incurred to date) and that it took Mr. Harding a further ten months to serve the notices of intention to withdraw and file the Withdrawal Notices.
- [10] Turning to a review of the bills, she properly noted (at para. 76) under the Act, the lawyer bears the onus of proving the work done and the accounts issued for the work done were necessary and reasonable: *Purcell v. McLean*, 2023 BCSC 365; *Cao v. Tsui & Cao Law Corporation*, 2015 BCSC 2072.
- [11] She then made the following critical findings, addressing some of the factors that must be considered on a review of a lawyer's account:

- a) the issues involved in the two actions were not difficult, complex or novel (at para. 82);
 - b) the Client may have been difficult but this was not a file that required skill, specialized knowledge or responsibility on the Lawyer's part over and above standard tort and motor vehicle actions (at para. 83); and
 - c) In early May 2022, counsel retained to defend the motor vehicle accident action had reached a settlement with the Client; the settlement was not before her, however the amount involved in the litigation was "not insignificant" to the Client (at para. 90).
- [12] In considering whether the time shown on the bills was reasonably spent, the registrar reviewed the entries on both the 2020 and 2022 pre-bills for each action. She was unable to conclude the posted time entries in the 2022 pre-bills "are an accurate reflection of the time actually spent" (at para. 111) and appears to have placed more reliance on the contemporaneous (2020) pre-bills. The lawyers' rates on the bills reviewed were reasonable, based on their level of call at the time the fees were charged but the hourly rates for the support staff was unreasonable (at para. 113). During the time the Lawyer was retained, there was some progress on the actions but the results obtained for the Client were minimal (at para. 118). A fair fee for both of the actions is \$20,000, inclusive of disbursements, and applicable taxes, and any interest owing on the disbursements (at para. 123).
- [13] I should note the disbursements listed on one bill amounted to almost \$5,000 and on the other to about \$6,000.
- [14] On appeal, Justice Girn described the standard of review of a decision of the registrar on a review of a lawyer's bill as deferential. She correctly held she could only interfere with the decision if it was clearly wrong, or if the registrar had erred in principle or made a palpable and overriding error in her findings of fact. She held:
- [112] Having reviewed the entirety of the 10 pages of the petitioner's statement of argument and the Registrar's reasons for judgment, the petitioner has shown no palpable or overriding error or error in principle in the Registrar's analysis. She carefully considered the petitioner's arguments and applied the applicable legal principles. In the end, she reduced the respondent's bills by one-sixth from \$54,155.13 to \$20,000. [By which I presume she meant by more than one-sixth, the standard considered in determining whether costs of the assessment are payable by the client or lawyer].
- [15] On this appeal, the Client asserts 38 errors on the part of the registrar or Justice Girn, including:
- a) failing to find the contingency agreement was entered into under duress;
 - b) finding the Lawyer had cause to withdraw as solicitor of record;
 - c) erroneously evaluating the quality and value of the work done;
 - d) reviewing the 2022 bills rather than the pre-bills; and

- e) reviewing the bills under the erroneous impression the motor vehicle accident action had been settled.
- [16] In his oral submissions to the Court, the Client focused upon what he described as those five palpable errors in the reasoning of the registrar and the reviewing judge, without differentiating between their roles. I will address each of these briefly:

The contingency fee agreement was entered into as a result of duress

- [17] The Client contends the registrar erred in dismissing his claim the contingency fee agreement was entered into as a result of duress. Justice Girn considered the duress argument to have been appropriately addressed by the registrar and was of the view no error in her analysis was identified by the Client.
- [18] Before us, the Client repeated the allegation the contingency agreement was entered into under "extreme duress". He claims to have been pressured to enter into the agreement by the Lawyer, in particular by his insistence at their first meeting that he assume conduct of both actions and the Client sign an agreement immediately because the tort trial was then only three weeks away. The Client points to the fact he left the office with an agreement unsigned by the Lawyer as evidence of the pressure to sign documents quickly. He specifically invites us to take a different view of this evidence than that taken by the registrar. That is not our role. In my view, it was open to the registrar to find duress had not been established on the evidence and correct for Justice Girn to find there was no error in the registrar's analysis.
- [19] I should add the allegation of duress is difficult to reconcile with the Client's assertion he would not have dismissed the Lawyer five years later when matters came to a head between them, if it had been up to him.
- [20] Further, an appeal founded upon an allegation the contingency fee agreement was entered into under pressure would almost certainly not result in the registrar's assessment being set aside. The termination of the retainer resulted in the Lawyer's fees being assessed on the basis he would recover such fees, charges and disbursements as the registrar found to be reasonably necessary and proper. That basis for assessment would not have been different had there been no contingency agreement.

The Lawyer had no reason to withdraw as counsel

- [21] The Client says there was no reason given by the Lawyer for terminating the retainer and no reason, in fact, to do so. He says, as rule, where a contingency fee agreement is terminated by the lawyer without cause no fees can be claimed, citing *Morrison Voss v. Smith*, 2007 BCCA 296, where Chief Justice Finch said:

- [32] This was, in my view, an implied term of the retainer agreement. A contract of retainer for a single transaction, such as a common law action, is an entire contract: see *Campney and Murphy v. Arctic Installations (Victoria) Ltd.* (1994), 86 B.C.L.R. (2d) 226 (C.A.). It is settled law that solicitors must have reasonable grounds for terminating an "entire contract" before completion, if they still wish to be remunerated: see *Underwood, Son and Piper v. Lewis* [1891-94] All E.R. Rep. 1203; see also *Halsbury's Laws of England*, (4th ed.) Vol. 44(1) para. 117.
- [22] In this case, however, the agreement provided the Lawyer had the right to withdraw if "continued representation would be impractical or unethical". The registrar found: "The facts of this case are not the same as in *Morrison Voss*" (at para. 71).
- [23] Without addressing the history in detail, as the registrar did, it is sufficient to say the relationship between the Lawyer and the Client became so acrimonious that the police were called by the Lawyer. As I have noted, the registrar held the solicitor-client relationship had broken down to the point it was irreparable and its termination was justified by either the Client or the Lawyer by the end of August 2019. No palpable or overriding error undermines this finding.

The notice of withdrawal was improperly served

- [24] The Client says the Lawyer's withdrawal was not effected in compliance with the provisions of the Act. When asked how deficiencies in service or notice prejudiced him or how an appeal might succeed on this ground, the Client suggested if he had received prompt and unambiguous notice of the Lawyer's intention to withdraw, he might have opposed the withdrawal. There is no reasonable prospect an appeal founded upon that argument might succeed. As I have noted above, the Client identifies no reviewable error undermining the registrar's conclusion the Lawyer had cause to terminate the retainer. Establishing the asserted deficiencies in service will not assist the Client.

The registrar mistakenly believed the motor vehicle claim had been settled

- [25] The Client contends the registrar erroneously assumed the motor vehicle accident action had been settled when she addressed the "amount involved" in the litigation, and Justice Girn wrongly discounted that error. Although she stated the action had been settled, the registrar did not have the terms of the supposed settlement. She proceeded on the basis the amount involved was "not insignificant" to the Client but made no other assumption about the Lawyer's success, describing the results he achieved as "minimal". She clearly did not credit the Lawyer with the settlement.
- [26] Justice Girn observed: "In my view, whether or not a settlement was reached for the MVA action did not influence the Registrar's decision in any way". She noted, "The fact that a settlement was not reached does not mean that the respondent did not do work on the file" (at para. 105).

- [27] The registrar reduced the Lawyer's bills substantially, to what may have been as little as \$8,000 in fees after deducting disbursements and the costs of the review from the total certified. The work done by the Lawyer included, in addition to reviewing the existing file and transcripts of prior examinations for discovery, attendance at four full or partial days of examinations for discovery in the motor vehicle action; an examination for discovery of the defendant in the tort action; making applications; reviewing medical records; and interviewing and preparing minutes of the evidence of six witnesses.
- [28] The Client says the Lawyer accomplished little for him because neither case went to trial or settled. The registrar herself said while results were minimal, some progress was made by the Lawyer. The Client is unable to appreciate the value of the progress made by the Lawyer. The registrar, however, is able to do so. I see no basis upon which we can interfere with her assessment of the criteria set out in s. 71(4) of the Act.

The registrar was mistaken in reviewing the 2022 bills

- [29] Finally, the Client says the registrar erred in using the final bills as the starting point of the review, rather than the sample pre-bills attached to the appointment taken out by the Client. The registrar addressed the argument the pre-bills should be reviewed at paras. 61-68 of her reasons, concluding as a "bill" is defined in the Act, the only bills issued to the Client by the Lawyer were the 2022 bills. Nevertheless, as I have noted, the registrar placed considerable evidentiary weight on the 2020 pre-bills.
- [30] Justice Girn concluded the registrar had adequately addressed the appellant's argument with respect to what weight should be afforded to the pre-bills. I agree. In my view, there is no error in the registrar's analysis and her assessment reflects the conclusion the first pre-bills were a useful measure of the value of the work done by the Lawyer but the 2022 bills were those she was charged with reviewing. There was, in this respect, no material error.

Conclusion

- [31] On his appeal to the trial court, the Client made out no reviewable error on the part of the registrar. In this Court he is required to demonstrate error on the part of the judge who heard the appeal from the registrar. In my view, he has not done so.
- [32] Most of the errors the Client enumerates relate to the assessment of the evidence by the registrar. Neither the reviewing judge nor this Court are in the privileged position occupied by the registrar. The reviewing judge, quite properly, took a deferential approach to the registrar's findings. I can see no error in her reasons. I would dismiss the appeal.
- [33] DONEGAN J.A.: I agree.
- [34] WARREN J.A.: I agree.
- [35] WILLCOCK J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Willcock"

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