
CANADA / JUDGMENT

LeClair v. Blenk

2009 BCSC 926

COURT

Supreme Court of British Columbia

DECIDED

7 July 2009

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2009 BCSC 926 LeClair v. Blenk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

LeClair v. Blenk,

2009 BCSC 926

Date: 20090707

Docket: E79047

Registry: Kelowna

Re: The Legal Profession Act and

Re: Accounts Rendered by G.R. LeClair and/or Thomas Butler LLP

Between:

G.R. (Greg) LeClair and or Thomas Butler LLP

Solicitor

And

Jeanina Esmeralda Blenk

Client

Before: Master Hyslop

Reasons for Judgment

Counsel for the Solicitor

C. Butler

Counsel for the Client

J.G. Hardwick

Date and Place of Trial/Hearing:

March 24 & 25 and

April 21 & 22, 2009

Kelowna, B.C.

- [1] This is a review of the bills rendered to Jeanina Esmeralda Blenk (the "client") by Thomas Butler LLP (the "law firm") pursuant to the Legal Profession Act, [SBC 1998] c. 9 and its amendments (the "LPA"). The bills were rendered pursuant to two retainer agreements between the law firm and the client. The lawyer who signed the agreements on behalf of the law firm and who did all of the work detailed in the bills is Gregory LeClair (the "lawyer").
- [2] The agreements entered into between the law firm and the client are dated November 23, 2006 (the "first agreement") and October 30, 2007 (the "second agreement").
- [3] The lawyer and the law firm took out an appointment dated May 15, 2008 to tax its bills dated December 20, 2007 and May 5, 2008 directed to the client. These bills are designated as bills 9 and 10 below.
- [4] The client took out an appointment on December 16, 2009 to tax all 10 bills designated below.
- [5] The bills rendered to the client pursuant to the agreements are as follows:

Date:

Fees:

Disbs:

PST:

GST"

Total:

Nov. 24, 2006 (#1)

\$6,775.00

Nil

Nil

Nil

\$7,181.50

Feb. 28, 2007 (#2)

\$4,525.00

Nil

Nil

Nil

\$4,796.50

April 27, 2007 (#3)

\$6,125.00

\$875.00

Nil

\$420.00

\$7,420.00

May 31, 2007 (#4)

\$6,875.00

\$380.00

\$481.25

\$435.30

\$8,171.55

June 29, 2007 (#5)

\$3,350.00

Nil

Nil

Nil

\$3,785.50

Sept. 5, 2007 (#6)

\$4,950.00

Nil

Nil

Nil

\$5,593.50

Sept. 21, 2007 (#7)

\$11,450.00

\$148.80

\$801.50

\$695.93

\$13,096.23

Oct. 18, 2007 (#8)

\$32,000.00

Nil

Nil

Nil

\$36,160.00

Dec. 20, 2007 (#9)

\$20,135.00

\$62.00

\$1,409.45

\$1,208.10

\$22,814.55

May 5, 2008 (#10)

\$123,445.00

\$62.00

\$8,641.15

\$6,172.25

\$138,320.40

TOTAL:

\$247,339.73

[6] The law firm acknowledged receipt and recorded the payments received from the client or on behalf of the client at the following times and in the following amounts:

Date:

Amount:

October 26, 2006:

\$6,909.23

November 7, 2006:

\$7,011.10

November 14, 2006:

\$7,076.52

November 17, 2006:

\$7,138.98

January 15, 2007:

\$7,311.15

February 7, 2007:

\$7,467.27

March 6, 2007:

\$7,474.73

September 28, 2007:

\$20,000.00

December 20, 2007:

\$25,000.00

TOTAL:

\$95,388.98

[7] The payments stated above are recorded in the bills from the law firm and directed to the client. Each bill has a page headed "Trust Statement" which shows all payments received from the client and all payments paid out as of the date of the bill. The tenth bill shows all monies received from the client or on her behalf by the law firm and all monies that have been paid out from these monies. The law firm used the software program, PC Law. It records the lawyer's time in increments of six minutes; .1 equals six minutes.

- [8] Of the above-described amounts, the sum of \$8,000.00 was paid to the client on December 20, 2007. Not included in the Trust Statement is a payment made by the client to the law firm in the amount of \$12,500.00. A copy of the cancelled cheque was introduced in evidence by the client. This cheque is dated March 7, 2008 and is written on a bank account of the client.
- [9] In both his evidence and his cross-examination, the lawyer denied receiving \$12,500.00 from the client. Exhibit 10, produced by the lawyer at this hearing, is described as a Client Account Ledger dated to March 25, 2009, recording a \$12,500.00 payment from the client as a "Payment of Account" and a reduction to the account receivable. There is no acknowledgement of receipt of this amount as being paid into trust by the client as all the other payments had been.
- [10] It was not until the last day of this hearing, when counsel for the lawyer replied to the client's counsel's submissions that the lawyer acknowledged the client had paid this amount. Further, counsel for the lawyer stated that this did not change the amount alleged owing to the law firm by the client. The law firm alleges that without any consideration of interest, the client owes the law firm \$153,371.71. The client has paid the lawyer the sum of \$99,888.98. This takes into consideration the payment to the client of \$8,000.00. Deducting \$99,888.98 from the total amount of the ten bills which is \$247,339.73, the amount outstanding is \$147,450.75, a difference of \$5,920.96.
- [11] In determining the facts of this case, where the evidence of the lawyer differs from that of the client, without evidence to corroborate the lawyer's version, I must accept the client's evidence. This is enunciated in *Waldock v. Bissett*, [1992] B.C.J. No. 1115, 13 B.C.A.C. 203. In *Waldock*, Madam Justice Southin stated at p. 6:

Mr. Waldock's evidence differs from this. Unfortunately, he did not confirm the discussion in writing at the time. The Registrar accepted the client's evidence. In my opinion, he was right to do so, not on any footing that the solicitor was not honestly describing the conversation as he recalled it but on the simple footing that a solicitor who knows or ought to know how easily misunderstandings arise, and how honest men may have different recollections of past events, must bear the brunt of a difference in recollection if he fails to make proper confirmation.

- [12] The client and the lawyer both gave evidence. Both were cross-examined. The lawyer presented expert evidence of Mr. Ronald Smith, a lawyer whose report was relied upon by the lawyer and the law firm. The client required the attendance of Mr. Smith who was cross-examined. The client presented expert evidence in the form of a report prepared by lawyer, Mr. Douglas King. Mr. David Rush, who was counsel for the client's husband, was called to give evidence on behalf of the client.

The Lawyer

- [13] The lawyer was called to the Bar in 1989 and is currently practicing with the law firm with whom he has practiced for the past fourteen years. At the time he undertook the client's matter, his practice consisted of 75% of family law work. The lawyer for the past eight years has operated his practice without the services of a secretary or legal assistant. He does all his own word processing and all other matters that a secretary or legal assistant might do.

The Client

- [14] The client speaks several languages. Her mother tongue is Romanian. She speaks French, Spanish, English and German. Although English is not the client's first language, at this hearing, when giving her evidence, she spoke English very carefully, using no slang or idioms and at times pausing to consider her choice of word or words. Her emails to the lawyer are easily understood. The lawyer described the client's English as her second language. I cannot determine this, nor did the lawyer provide evidence as to how he came to that conclusion. In any event, there is no evidence before me that the client's proficiency in English caused problems for her in communicating with the lawyer.
- [15] The client attended school in Romania. She graduated with a bachelor's degree in psychology from the University of Bucharest. She has never held paid employment during her life.

BACKGROUND

- [16] The client told the lawyer that prior to marrying her husband, he insisted on her signing an agreement dated December 18, 2001 in the German language. This agreement relates to the property regime during the marriage and the client's entitlement to property and maintenance should the marriage end by death or divorce. The client told the lawyer that her husband would not marry her if she did not sign the agreement. The birth of their first child occurred within two weeks of signing the agreement. At this hearing, the five-page translated agreement was placed in evidence. The client described the agreement as one in which if the marriage failed she was left with what she came in with. The agreement provided for German law to apply to the property regime during the marriage which is separate property which included property located in other jurisdictions. Depending on who left the marriage, spousal maintenance was not payable, or if payable, time limited. Child support was governed by German law.
- [17] At the time the client contacted and retained the lawyer, the client was 26 years old, a mother of two boys aged 5 and 3, and married to a man 40 years her senior to whom she had been married since December 21, 2001.
- [18] The client is a Romanian citizen. She and the children are Canadian landed immigrants, arriving in Canada on March 26, 2004. She and her husband met in Romania, resided together in Lichtenstein and married in Germany. The client's husband was a German

citizen and is now a Canadian citizen. The client's husband immigrated to Canada initially while married to his first wife returning to Europe, but still maintaining his immigration status in Canada. The lawyer concluded from facts given to him by the client that the client's husband had powerful political and business connections in Canada.

- [19] The client described to the lawyer how her husband had been arrested in Spain, jailed and turned over to the German authorities in Stuttgart and jailed for German tax problems. She recounted to the lawyer that her husband had persuaded the German authorities to release him upon posting money as security then leaving for Canada. Eventually and in about March/April of 2007, the client's husband travelled to Germany resolving matters with German authorities by paying several millions of Euros.
- [20] The client alleged that her husband mentally and emotionally abused her and the children, described by her to the lawyer as "unbearable" for her and the children. She described to the lawyer an incident in which the husband shot an arrow towards her while she was in the hot tub.
- [21] The client first contacted the lawyer by telephone on September 7, 2006 and met with him that day. She recounted to the lawyer some of the facts that I have described above. In the first meeting and in subsequent meetings and telephone conversations with the lawyer, the client disclosed to the lawyer that her husband was a wealthy man who owned real estate in Spain, Germany and Canada, having sold their Lichtenstein home prior to her moving to Canada. He continued to hold business interests in Lichtenstein and in Canada. The lawyer, early on in the relationship with the client, concluded that the client's husband was a sophisticated businessman.
- [22] The lawyer told the client that before any proceedings could be commenced, the client's husband's business documents had to be collected so that the lawyer could examine them. At the request of the lawyer, the client brought in documents belonging to her husband for photocopying in the lawyer's office without her husband's knowledge, then returning the documents to the place from where they were taken. There were numerous documents taken into the lawyer's office, and on one occasion the client brought in, as described by the lawyer, a duffle bag full of documents.
- [23] Throughout the retainer between the client and the lawyer, communication was by email, telephone and meetings in the lawyer's office. The lawyer stated that during the first year it was mainly by email and the telephone. This was because the client had her two young children to care for and she could not leave the home without the husband becoming suspicious as to her whereabouts.
- [24] The plaintiff and the defendant addressed each other by their first names: Greg in the case of the lawyer and Esme in the case of the client.

- [25] Prior to commencing any action, the lawyer told the client that this litigation would be a "long hard battle" and it would be very expensive. As a result, the client would have to build a "war chest" to face her husband's millions which he would use against her. The lawyer said that before any litigation was commenced he needed to have a picture of the husband's assets and have all their "ducks in a row". The lawyer stated that the plaintiff agreed with this strategy. The lawyer stated that his instructions from the client were to go after the global assets of her husband, and that these instructions never changed.
- [26] The lawyer and the client entered into a written retainer; the first agreement. The lawyer agreed to the following:

DESCRIPTION OF SERVICES

It is anticipated that this firm's representation will involve our undertaking, on your behalf, any or all of the following services, as required:

- (a) attempt to negotiate a settlement;
- (b) commence or defend proceedings for guardianship and custody of children, child or spousal maintenance and division of property, as is applicable;
- (c) applications to either Provincial or Supreme Court for orders;
- (d) obtain financial disclosure from other side;
- (e) prepare for, attend and conduct examinations for discovery;
- (f) negotiate and prepare a settlement agreement;
- (g) prepare for and attend at trial, if settlement is not possible; and
- (h) obtain a divorce, if so instructed.

We have informed you and you understand that the actual services or procedures to bring the dispute to a determination may very well be more, less or different than as set out above. You hereby authorize this firm to engage the services of any of its members, employees, experts and agents, as may be necessary for the effective conduct of your case.

- [27] The first agreement required a \$50,000.00 retainer from the client. The first agreement explained the use to which this retainer would be put. The first agreement further stated that once the retainer is used the client is required to "be fully replenished by you upon our request". The first agreement stated that in the event the client failed to replenish the retainer, "all legal services provided by this firm pursuant to this agreement may be immediately suspended, without notice to you."
- [28] The first agreement states that a lawyer's bill consists of three components. The first being the fees which the lawyer was to charge the client, \$250.00 per hour for legal services "or \$350.00 per hour for summary and conventional trial work (the "normal hourly fee") and that this normal hourly fee may be subject to a premium depending on the degree of

urgency presented, the complexity involved and the results achieved. If a premium is added, "it shall be discussed with you beforehand." The other two components described in the first agreement were disbursements and taxes. The first agreement stated that "Accounts will be rendered and sent to you during the term of this Agreement either on a monthly basis or whenever work in progress and or disbursements exceeds \$500.00."

- [29] The second agreement was to replace the first agreement. It has many clauses that are the same as in the first agreement, however, the hourly rate was changed so that all legal services provided to the client are at the rate of \$350.00 per hour. New to this agreement is the following acknowledgement:

We confirm that you have acknowledged that in this dispute, we have been confronted with an intelligent and tenacious adversary, a high degree of urgency (including ex parte and short notice Court applications), important issues (including allegations of abuse and a custody/access fight over your children), extremely high time commitment, in your case (including giving your case top priority and ignoring other pressing legal files in favour of your case), a complicated fact pattern (including special considerations for child and spousal support, foreign pre-nuptial agreement, foreign property, alter ego trusts, multi-layered corporate structures, multi-layered corporate ownership, foreign laws and possible compensation issues), and the value of your entitlement to property at issue (being between \$2,000,000.00 and \$10,000,000.00).

We confirm that we have been providing extensive legal work for over one (1) year now to protect and further the legal rights of you and your children. We confirm that to date we have charged you over \$70,000.00 in legal fees and, currently, have approximately \$20,000.00 in accounts receivable and yet to be billed worked in progress in this matter. We confirm that you have acknowledged that the legal fees to date have been reasonable in all of the circumstances of this case and that you consent to the legal fees charged to date and the suggested cost of the work in progress to date.

Given all of the above-mentioned considerations, we confirm our advice to you and your acknowledgement and consent to the possibility that our eventual total legal accounts will be in excess of \$250,000.00. As well, although we will not be billing you on a contingency or percentage basis, we confirm that you have informed us that you would consider it reasonable if our eventual legal accounts approximated 10% of the value of your entitlement to property at issue (being 10% of \$2,000,000.00 to \$10,000,000.00).

- [30] The client advised the lawyer in the spring of 2007 that she wanted to return to Europe with her children. The client's husband was travelling to Germany in March of 2007, returning the following April. She wished to return to Europe without the knowledge and consent of her husband. She asked the lawyer for a formal opinion which the lawyer gave her in writing in a letter dated April 27, 2007. The lawyer advised the client against this. This was accepted by the client.

- [31] Legal action was not started on behalf of the client until September 4, 2007, when the writ and statement of claim were issued. The statement of claim sought a divorce, guardianship, custody and access to the children, maintenance, the equal division of family assets and costs. At the same time, a demand for discovery of documents was prepared, a notice to produce and a notice to file a Form 89 financial statement. These were all eventually served on the husband or his lawyer, but not before the wife brought a without notice motion on September 17, 2007 before the court seeking to remove the husband from the family home, and an order restraining the husband from having any contact with the client. The court granted the order which included the client having interim primary care of the children. The client's husband was served with the order on September 20, 2007. Subsequently and in an email, the client expresses her gratitude to the lawyer for what the lawyer has done for her. At this time she is aware that her husband has counsel and that her husband will seek to set aside the without notice order.
- [32] The client's husband (the "husband") retained Mr. David Rush who, through a flurry of letters directed to the lawyer, attempted to obtain access to the children for the husband. These letters are responded to by the lawyer with a proposal of access to the children by the husband. At the same time, Mr. Rush expressed a desire to secure for his client, his documents. The lawyer then raises in correspondence the client's need to have the children's passports, birth certificates and other documents relating to the client and the children. The matter of support for the client is raised by the lawyer in correspondence to Mr. Rush. Mr. Rush, in writing, assures the lawyer that the financial arrangements in place prior to separation will continue. The lawyer communicates in writing to Mr. Rush that present financial arrangements are not sufficient.
- [33] On October 4, 2007, Mr. Rush, delivered a notice of motion and supporting affidavits seeking to set aside the without notice order and within a few days a notice of hearing is delivered. On that same day, Mr. Rush confirms a conversation suggesting that the interim issues relating to the occupation of the family home, custody, guardianship and access to the children be mediated. In a letter, Mr. Rush writes that he has contacted a mediator who would be available the next week. The lawyer responds by advising Mr. Rush that in his view mediation would not be appropriate, complaining to Mr. Rush that he was not consulted about the hearing date for the motion to set aside the without notice order.
- [34] The client's husband's application to set aside the without notice order is dismissed. Other orders were made. The lawyer views this as a big win for the client. In his evidence, the lawyer states by this time the client's file is taking over his practice and "mushrooming". There is disagreement between counsel as to what orders were made, and in particular, whether the Master ordered the attendance at a judicial case conference ("JCC"). The parties were required to attend a JCC and did attend a JCC.

- [35] The lawyer gave evidence that by October 2007, the client was not replenishing his retainer as was required by the terms of the first agreement. After the outcome was known to set aside the without notice order, the second agreement was signed between the client and the law firm.
- [36] An application is brought for support for the client and the children. This application came before the Master on December 19, 2007, at which time the Master ordered a one-time payment to the client of \$25,000.00. The lawyer received the \$25,000.00 from the client. He paid \$8,000.00 to the client and the balance to the outstanding bills of the client.
- [37] The support application was adjourned. It was heard two days in February and one day in March of 2008. The Master reserved and gave written reasons dated April 30, 2008. The Master determined the husband's income and ordered the husband to pay the client spousal and child support. The Master ordered that the client and the husband bear their own costs as "both parties took an extreme position".
- [38] This litigation was placed into case management by the Master. On January 22, 2008, the parties and their counsel appeared before the Master. On January 25, 2008, the Master issued the case management plan which consisted of a number of orders, including the length of the trial, and when it would take place, setting deadlines for certain applications to be made and certain preliminary procedures to be taken. There were a number of deadlines imposed, some exclusively on the client. These deadlines were joining the husband's companies which the husband had an interest, the retaining of expert witnesses and an application to obtain funds from the husband for that purpose. The client was aware of these deadlines. The Master ordered that neither of the parties could set down an application without the other party agreeing to the date of the hearing. Despite this there were numerous applications, some of which were made by telephone.
- [39] The client's husband filed a notice of appeal relating to his application to set aside the without notice order which was dismissed. The appeal was not pursued. There were applications relating to a truck belonging to one of the husband's companies which the client refused to give up as well as disputes relating to the husband attempting to obtain items of his from the family home, which required court applications to resolve.
- [40] Subsequent to the hearing of the support application and before the reasons were issued, the husband brought an application revisiting matters relating to guardianship, custody and access to the children. There was a lengthy affidavit prepared for the plaintiff who participated in its drafting. There were three other affidavits prepared by the lawyer to defend the husband's motion. These affidavits were from third parties.

- [41] In April of 2008 and before the Master filed her reasons for judgment for child and spousal support, the lawyer was preparing two motions to present to the court on behalf of the client. These motions were to add the husband's companies as defendants, amend the statement of claim, and obtain the sum of \$350,000.00 from the husband to pay the client's experts. The reason for adding new defendants and amending the pleadings is set out in paragraphs 5 and 6 of the unsworn and unfiled affidavit of the client #8:
5. I believe that without an order by this Honourable Court to add the Defendant's alter ego trust and various corporations, we will fail to obtain reasonable and necessary information and document disclosure in this action.
6. The reason for the failure to include the additional parties in the original Writ was lack of information regarding the interrelationship between the Defendant and the various companies that he is involved with. It was not until evidence was produced through multiple affidavits that I was in a position to see "how the pieces of the puzzle fit together."
- [42] The lawyer sought estimates from four or five potential experts. The lawyer drafted an affidavit for the client to swear relating to these motions. These motions were never heard as the client terminated the lawyer's services.
- [43] Towards the end of April of 2008, the lawyer noted that the client had gone through a change in attitude relating to her litigation, as she was not responding to the deadline set out by the court.
- [44] The client told the lawyer that he would never get her signature on proposed affidavit #8 which was to support the application for money to hire experts to present her case. This "stunned" the lawyer. On April 30, 2008, the client sent the lawyer the following email:

Hi Greg,

I will be at your office on [Monday] May the 5th at 1pm.

I would like to get from you all your invoices, and as well I request the statements for my account in your trust.

I hope that you can give me the Receipts for the money you received from me up till now.

I [would] like a copy of that document I signed for you, that sort of contract between us.

Thank you,

Esme

- [45] After receiving this email, the lawyer emailed to the client the Master's written reasons for interim support.
- [46] On May 1, 2008, the client emailed the lawyer (exhibit 2, tab 96). In that email, the client stated:

I still do not understand your [strategies] nor my options, and I am sorry to say this but I have asked you on numerous occasions what are the possible paths and what are my options in this case.

You have not yet explained to me any of the paths possible nor options I have. Therefore I was forced to have the decision of April 30, st.

[47] The client tells the lawyer that although she was at the case management conference, she recalls letting him know that she did not follow the discussions. She says in the email dated May 1, 2008:

I recall asking you to clarify. You did not sit down with me to put these discussions on paper, so that I can comprehend them.

[48] She explains in her email that she was not aware that this case was for splitting her husband's property and thought that the proceedings were about child and spousal support.

[49] On May 5, 2008, the client picked up her bills from the lawyer. They discussed the payment of the law firm's bills, and after several proposals made by the lawyer, the lawyer believed that when the client left his office she had agreed to a payment schedule.

[50] On May 7, 2008, the client wrote to the lawyer instructing him to cease working on her file.

[51] I have described generally the work that the lawyer did for the client. There were numerous letters and emails exchanged between the lawyer, the client and the husband's lawyer. I have not attempted to relate everything purported to be done by the lawyer as the bills set out those particulars.

[52] The lawyer acknowledged that he told the client a story concerning a client of his who did not pay his bills and which resulted in the lawyer no longer performing legal services for that client. The date or dates when the story was told to the client is not in evidence.

[53] The client's evidence is that she never received her bills as they were rendered. Her evidence is that she received all her bills when she picked them up on May 5, 2008. The lawyer was unable to say when the bills were sent to the client or whether he sent them. His evidence was that he thought he would have given them to her when she came into his office. I must accept the client's evidence on that matter.

[54] The client acknowledges she retained the lawyer. She stated that her main focus was on her children. She stated at this hearing that in the fall of 2006, her assets were the home that she and her husband owned, 50,000 Euros that she and her husband had in a bank account in Lichtenstein, and 7,000 Euros in a bank account in Spain.

- [55] The client stated that when she first met the lawyer he told her he usually asked for a \$5,000.00 retainer, but for this complex case he needed much more. Over a period of time, the client permitted her mother, a resident of Romania, to withdraw money from the Lichtenstein account on seven different occasions, and not in excess of 5,000.00 Euros each. Those funds were sent to the lawyer's trust account. The limitation as to the amount was due to banking regulations and the increase of fees for amounts in excess of 5,000 Euros.
- [56] Before the fall of 2006, the client stated that she had never retained a lawyer and had no familiarity with the Canadian legal system. She stated that she was confused as to the law and how it impacted in "real life". She had no family living in the community in which she lived or in Canada.
- [57] In her evidence, she stated that she was very clear in her mind the year before her proceeding started, that she wished to separate from her husband. She clearly states this in emails that she sent to the lawyer on June 9, 2007 (exhibit 1, tab 24), and another one dated July 24, 2007 (exhibit 1, tab 29). In those emails, the client makes it clear to the lawyer that she can no longer tolerate residing with her husband any more. The lawyer is aware of this and in notes he made from a telephone conversation with the client (exhibit 1, tab 15), he states the client sounded very low, things are bad and she would like to commence proceedings. He writes in his notes that the client:
- wants to commence legal proceedings immediately, I am trying to slow things down - to make sure that [the client] is sure - I have told her several times that this will be an "all-consuming battle."
- [58] In August and September of 2007, the lawyer and the client are talking about alternate places for the client to reside.
- [59] The client stated that the commencement of the litigation took longer than she liked, and the lawyer kept insisting that she gather more information concerning her husband's business and finances in the form of documents.
- [60] The client acknowledged that she was pleased when the without notice order was granted by the court. She stated that she attended most court appearances at the request of the lawyer.
- [61] The lawyer asked the client to obtain an opinion from a German lawyer as to the enforceability in Germany of the contract between her and her husband. She had her mother obtain this advice for her. The advice was that the contract was enforceable in Germany. She believed she passed this on to the lawyer.
- [62] The client stated that she was seeking child and spousal support. After the without notice order, she had difficulty living on \$3,000.00 per month that the husband was paying her as there were many other expenses that the husband paid while they lived together. She gave evidence that she borrowed money from friends and "maxed" her credit cards. She stated that in September of 2007, she gave the law firm \$20,000.00 from her bank account. She stated upon receipt of the \$25,000.00 which was paid directly to her, and which was ordered

by the court to be paid to her, it was the lawyer who decided that she would receive \$8,000.00 from this amount.

- [63] She related at this hearing how upset she was when her husband, in March of 2008, brought the application relating to custody and access to their children, and how in the affidavits her husband filed, attacked her as a mother. For those purposes, she stated that she reviewed and corrected an affidavit that the lawyer drafted in an email dated April 25, 2008.
- [64] She stated that she was aware that the lawyer was working on an application to obtain \$350,000.00 for retaining experts for her litigation. She stated at this hearing that she did not know how she could pay these experts. She stated it was not her intention to proceed in this direction and that she did not agree with this. She stated that she had come to realize that if she did not "win" at the trial, she did not know how she would pay back her husband, and that she realized that her only asset was her interest in the family home. She said she was aware of the deadline for affidavit #8 for purposes of procuring the \$350,000.00. The lawyer, she stated, had started to draft the affidavit five days before the deadline, and she decided she would not sign it. She stated she would not jeopardize the future of her children "for ripping out her husband's assets." She told the lawyer she would not sign draft affidavit #8. She then sent the email to the lawyer on April 30, 2008 at 11:21 a.m. (exhibit 2, tab 93), which is quoted in para. 44 of these reasons.
- [65] Within a few minutes later, she received the Master's reasons for child support and spousal support and the lawyer acknowledged receipt of her email that she had just sent.
- [66] She concluded that the lawyer was not listening to her when he sent her an email dated April 30, 2008 at 4:02 p.m. She stated that she asked for all her documents and all her accounts in her email (exhibit 2, tab 93) as she did not know her financial situation with the lawyer, where money went and "where I am at."
- [67] After receiving a letter dated April 30, 2008 (exhibit 2, tab 95), from the lawyer confirming her instructions, that she did not want to pursue an application to court for money to pay her litigation experts, the client on May 1, 2008, emailed the lawyer. That email, found at exhibit 2, tab 96, expresses her concern about where her case is going and the options she has. She is critical of the lawyer not explaining these to her and seeking a share of her husband's property. She writes:

My [understanding] has been that the [proceedings] were about Child and Spousal Support.

- [68] In that email, she refers to her unsworn draft affidavit #8 and the planned applications to add the defendants and seek money to pay the client's litigation experts by writing:

Honestly, I think you should have asked me if I agree with starting to work on such document first of all. I think you should have informed me of the [consequences] of such a document and last I think that I should have read this document as you were preparing it and not five days before the deadline.

Greg, I have two little children, I was expecting you to inform me of all the steps and make sure that I understand.

I did not [understand] and still do not understand where you are driving this case into.

I just want a separation and I want to raise my children properly. I do not want a war for Gerhard's money.

If only deciding for a TEMPORARY Child and Spousal Support took nine months. This tells me of what is to expect.

I will see you on Monday at 1 pm.

Esme

[69] On May 5, 2008, as arranged between the client and the lawyer, the client met the lawyer at which time she picked up a letter dated May 5, 2008, written by the lawyer, and which included a draft of the Master's order relating to support, a copy of the second agreement between the client and the law firm, and all bills rendered by the law firm and the law firm's client money ledger and trust ledger. In that letter, the law firm reminds the client that all unpaid accounts would accrue interest. The lawyer writes:

We further confirm our later arrangement on payment that, due to the fact that you did not have money presently available, the outstanding legal balance would be taken out of payments received to your credit in this matter, including all support payments, all property advances and property division settlement payments.

[70] The client, in the course of this meeting with the lawyer, said that she saw the sum of \$219,000.00 for the first time. This is contained in the letter. She did not make any issue of the bills and found them "overwhelming" and did not want to have an argument with the lawyer. She told the lawyer that she did not want to contribute \$10,000.00 each month from her support order as suggested in the lawyer's letter.

[71] On May 5, 2008, the local newspaper came out with an article concerning the support order granted by the Master. This caused anguish for both the client and her husband. They spoke with one another and concluded that they did not want this for their children. In evidence, the client stated that she knew she was on the "wrong path" and stopped the lawyer from dealing with her case. She communicated this to the lawyer in a letter dated May 7, 2008, referred to earlier (exhibit 2, tab 6). She stated that she went to the courthouse and filed a document that she represented herself. She then hired the lawyer who represented her at this hearing. Within a month of writing the May 7 letter, she and her husband settled their legal differences in writing.

[72] The client stated that she was not told by the lawyer that he had no secretarial support, it was never discussed, nor was the premium or bonus billing, as billed by the lawyer above the hourly rate, discussed.

[73] The client acknowledged that she chose the lawyer and that as the client she was in charge. She acknowledged that as her case was complex and that the lawyer needed more than a \$5,000.00 retainer. She said she did not agree with the process of the lawyer asking for much more than what she really wanted. She could see that she was going to lose her children's home and she had to put a stop to it. She feared her husband as she was afraid he would send her back to Romania and might take the children away from her. She said she was aware that the computer called for more spousal support and child support (I believe she was referring to the Spousal Support Advisory Guideline and the Federal Child Support Guideline tables), that those amounts were too much and that \$15,000.00 per month was fine with her. (This is the amount awarded by the Master for child and spousal support). She stated she never understood the need for an expert and still does not understand why other parties were being added to the lawsuit. None of this was explained to her. She became concerned that she would lose her interest in the family home if this litigation was pursued as the lawyer was pursuing it.

[74] The events that I have laid out and the submissions made by counsel, raises the following issues:

1. is the appointment, taken out by the law firm and the lawyer, null and void?
2. does the payment of the accounts prevent the plaintiff from taxing her bills, save and except bills #9 and 10?
3. did the law firm and the lawyer describe the disbursements as required by the LPA?
4. did the lawyer follow the client's instructions in pursuing this litigation and, if so, were they reasonable and necessary? As part of this question, was the lawyer entitled to bonus bill the client in accordance with the terms of the retainer?

[75] In considering these issues, the following sections of the Legal Profession Act, S.B.C. 1998, c. 9 come into play:

Definitions and interpretation

64 (1) In this Part:

"agreement" means a written contract respecting the fees, charges and disbursements to be paid to a lawyer for services provided or to be provided and includes a contingent fee agreement;

"bill" means a lawyer's written statement of fees, charges and disbursements;

"charges" includes taxes on fees and disbursements and interest on fees and disbursements;

...

Lawyer's bill

69 (1) A lawyer must deliver a bill to the person charged.

...

- (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.
- (4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.
- (5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.

...

Review of a lawyer's bill

70 (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before

- (a) 12 months after the bill was delivered under section 69, or
- (b) 3 months after the bill was paid,

whichever occurs first.

...

- (3) Subject to subsection (11), a lawyer may obtain an appointment to have a bill reviewed 30 days or more after the bill was delivered under section 69.

...

Matters to be considered by the registrar on a review

71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).

- (2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:
 - (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
 - (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
- (3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:

- (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
- (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.
- (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.
- (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.

Costs of a review of a lawyer's bill

72 (1) Costs of a review of a lawyer's bill must be paid by the following:

- (a) the lawyer whose bill is reviewed, if $\frac{1}{6}$ or more of the total amount of the bill is subtracted from it;
- (b) the person charged, if less than $\frac{1}{6}$ of the total amount of the bill is subtracted from it;
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.

Remedies that may be ordered by the registrar

73 (2) On a review under this Part, the registrar may

- (a) give a certificate for the amount the registrar has allowed the lawyer for fees, charges and disbursements, and
- (b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.

Is the Appointment, taken out by the law firm and lawyer, null and void?

- [76] I have concluded that the appointment as it relates to bills #9 and 10 is null and void. I concluded earlier in these reasons that all 10 bills were delivered to the client on May 5, 2008 for the first time.
- [77] Before an appointment to tax a bill can be taken out, 30 days must pass from the date of delivery of the bill to the client. Section 70(3) is the basis of this conclusion. In *Pierce, van Loon v. Edwards* (1994), 96 B.C.L.R. (2d) 60 (BCSC), Mr. Justice Fraser at para. 46 concludes:
- [46] Section 71(1) of the Act imposes a mandatory waiting period before a solicitor can initiate a review of his or her own bill. I take the policy of this provision to be that a client must be given a reasonable amount of time in which to consider his or her position, before a solicitor may commence what amount to enforcement proceedings.
- [78] Madam Justice Huddart in *Bull, Housser & Tupper v. Mr. T. Int.*, 1999 BCCA 427, when interpreting this section stated at para. 2:
- [2] However harsh it may seem to the respondent, I am persuaded the waiting period must be respected and that the failure to wait 30 days cannot be cured because the review was effectively a nullity.
- [79] Since *Pierce, van Loon* and *Bull, Housser & Tupper* were decided, the particular section under the LPA was amended. However, in *Jaffe v. Swamy*, (2001) S.C.B.C. L011525, unreported, Master Patterson stated the following:

Section 70(3) of the Legal Profession Act provides that "a lawyer may obtain an appointment to have a bill reviewed 30 days...after delivery." Notwithstanding the fact that the language has changed since the decisions of *Pierce, van Loon v. Edwards* and *Bull, Housser & Tupper v. Mr. T.*, a 30-day waiting period is still required between the date of delivery of the bill and the date of obtaining the appointment. The language in [s 70(3)] is somewhat confusing, but it appears that the 30-day time period refers to the obtaining of an appointment rather than the review of the bill itself.

Does the payment of the accounts prevent the plaintiff from taxing her bills, save and except bills #9 and #10?

- [80] The answer to this question is no. I have already found that the client did not receive the bills until May 5, 2009. She could not have known when the lawyer and law firm paid her bills as a result of transfer from trust until she received the bills. As a result, I conclude that the client can tax all ten bills.

Did the law firm and the lawyer describe the disbursements as required by the LPA?

- [81] Pursuant to s. 69(4) of the LPA, disbursements and taxes, in this case PST and GST, must be itemized in the lawyer's bills to the client. Section 69(4) of the LPA specifically states "... and a detailed statement of disbursements."

- [82] The description of disbursements in both the first and second agreement is the same, except the hourly connection fee for Quicklaw research is \$200.00 in the second agreement, a \$10.00 increase from the first agreement. Except for bills #7, 9 and 10, the bills do not disclose a detailed statement of disbursements. Instead, the bills #1-6 and #8 totals the fees, adds an additional amount to the fees and states "Total fees, disbursements and taxes." There is no disclosure, nor breakdown of this additional amount. In bill #3, the law firm details the GST payable as "Total GST Payable on Fees and Taxable Disbursements: \$420.00". This same bill states "Total PST Payable on Fees: \$0.00". None of this was explained by the lawyer at this hearing. PST is required to be paid on legal fees. There is no breakdown of the GST and PST payable on the fees and those on the taxable disbursements.
- [83] I have calculated the GST and PST on each of these bills. Without exception, a modest amount is charged in excess of the PST and GST, for which there is no described disbursement or charge. These additional amounts have not been proven.
- [84] In bill #3, the law firm charged a total of \$875.00 for Quicklaw research. The first and second agreement refer to Quicklaw research. In the first and second agreement, the disbursements are referred to as "out-of-pocket expenses" which one could conclude that Quicklaw research is an out-of-pocket expense. No evidence is before me as to the payment of the Quicklaw research as contemplated by the agreement. The Quicklaw research has not been proven.
- [85] The lawyer gave evidence that he had a number of documents translated by a translator and it was quite costly. There is evidence before me that a translator was contacted. None of the ten bills show this as a disbursement.

Did the lawyer follow the client's instructions in pursuing this litigation and, if so, were they reasonable and necessary? As part of this question, was the lawyer entitled to bonus bill the client in accordance with the terms of the retainer?

- [86] The lawyer and law firm premium billed the client in bills #7 and 8. The amount is \$2,600.00 in bill #7 and described in the bill as a premium for "urgency, complexity, importance to the client and outcome". Bill #7 is for a period from September 6, 2007 to September 26, 2007. This premium charge appears to relate to obtaining the without notice order. It was not demonstrated by the lawyer how the obtaining of the without notice order was either complex or urgent. The lawyer had been working on the client's file since November of 2006. From that date, the lawyer and the law firm had billed the client a total of \$36,948.55 for fees and disbursements. This application was not brought on an urgent basis. The lawyer was taking his time and waiting for the client's retainer to build up to the sum of \$50,000.00, which he used for fees and disbursements as time moved on. This is acknowledged in a written note of the lawyer in which he writes:

*[[client] is not ready to enter a protracts dispute yet - not enough funds transferred from Lichtenstein, yet.]

- [87] In bill #8, the lawyer and the law firm billed the client \$7,100.00 premium for "urgency, complexity, importance for the client", but this was not demonstrated by the lawyer. This work was apparently for defending the husband's application to set aside the without notice order.
- [88] The first agreement governs bills #7 and #8, the agreement stated that before any premium billing was to be added to the client's bill, "it shall be discussed with you beforehand." There is no evidence before me that in fact this occurred. The client stated that this did not occur. This clause was left out of the second agreement.
- [89] The premiums in bills #7 and #8 were not earned in accordance with s. 71(4) of the LPA. The premiums were not discussed with the client and are not proven.
- [90] The expert evidence presented at this hearing is a report from Mr. King dated September 16, 2008 and a report from Mr. Smith dated September 25, 2008.
- [91] Mr. King, who reviewed the entire file, concluded:

In a case of this complexity and degree of conflict and distrust taking a "broad stroke view", looking at the case "in the round" with the benefit of hindsight, the range of fees to take the case to the stage it was at the end of May 2008 should have been in the range of between \$75,000 - \$90,000 plus disbursements and taxes, representing approximately 300 - 350 hours of lawyer's work at a rate of \$250.00 per hour.

- [92] Prior to coming to this conclusion, Mr. King concludes that it is unusual for a lawyer to midway during the retainer to enter into a second retainer before the conclusion of this matter, suggesting that perhaps the client should have had independent legal advice.

- [93] Mr. King suggested that mediation ought to have been attempted, stating:

Experienced mediators and counsel deal with this reality routinely [this is referring to the power unbalance]. There are many techniques employed to address this, including keeping the clients in separate rooms.

The fact the husband voluntarily paid considerable of the wife's expenses should have evidenced sufficient reasonableness to embark on mediation.

- [94] Mr. King points out that in the retainer agreement on page 1, the description of services (a), (f) and (g) relate to attempts to negotiate settlement. In this case there were none.
- [95] Mr. Smith, in his letter of opinion dated September 25, 2008, states that he was asked to respond to Mr. King's opinion letter of September 16, 2008. He makes it clear that he did not review the contents of the six boxes which were the client's file that Mr. King reviewed. Mr. Smith makes the point that the matter of mediation revolved only around the interim occupation of the home, custody, access and guardianship. Mr. Smith offers the opinion that the manner in which Mr. Rush proposed mediation was really "but attempts to position the parties."

- [96] Mr. Smith points out that Mr. King refers to the husband voluntarily paying considerable of the wife's expenses by paying \$3,000.00 a month to her. He points out that the Master in her final reasons for interim maintenance ordered considerably more.
- [97] Mr. Smith concludes that there were two key applications, the case management conference and the application for interim spousal support. As to the retaining of experts, Mr. Smith confirms that it was appropriate for the lawyer to look for experts and suggested that one tactic to save money would be to wait for the husband's expert to report and then use an expert for rebuttal evidence.
- [98] Mr. Smith concludes:
- Reviewing the steps taken by Mr. LeClair from the beginning of conduct of this file to his discharge in April of 2008, from the material I reviewed in the 2 volume Taxation Book, and the motions, affidavits, and orders, in my opinion, Mr. LeClair's conduct of this file was appropriate and relevant, and the hourly time expended justified.
- [99] In cross-examination Mr. Smith acknowledged that he was unaware that the lawyer operated without a secretary or legal assistant and did all his own word processing. Mr. Smith stated that he did not practice this way, but there was nothing wrong in doing so.
- [100] The lawyer gave evidence that he built up substantial precedents and that he can produce documents as fast as any secretary can. This was not proved. The lawyer was charging his hourly rate for doing what could be described as secretarial or legal assistant's work.
- [101] The lawyer was specifically cross-examined on his bill #4 and particularly referring to preparation of the writ and statement of claim, preparation of certificate of pending litigation, preparation of notice to file a Form 88, preparation for demand of discovery of documents and preparation of notice to produce. The work products were produced and entered as an exhibit. All of these documents are form documents. The only part of the statement of claim which would have required more than fill-in the blanks or short statements of fact was paragraph 14(a) under part D., which was a description of the German marriage agreement, allegations as to how and under what circumstances it was entered into, and setting out the client's position that it should have no force or effect.
- [102] The cost of preparing the documents described above was \$1,900.00; that is 27% of the fees charged in bill #4.
- [103] In cross-examination, Mr. Smith acknowledged he would take less time than the lawyer took in preparation of these documents. Mr. Smith has always used and relied on secretarial support to practice effectively. Mr. Smith also acknowledged that it was important to secure an opinion as to the enforceability of the German marriage contract.
- [104] Mr. David M. Rush gave evidence that he was the husband's lawyer, and he is involved in civil litigation of which 30% is family law. He was retained by the husband in September of 2007, when the husband was served with the without notice order and all other documents

supporting that order. Mr. Rush was called to describe what happened during the litigation until May of 2008. He also stated that his hourly rate is \$325.00 per hour and Breanna Hartwick's, another lawyer in his office, hourly rate is \$175.00 per hour, and she also worked on the file. Mr. Rush gave evidence that his firm charged fees to the husband in the amount of \$104,036.38. Mr. Rush, as counsel for the husband, stated that the work done for the husband was to secure interim access, secure his personal possessions as well as the company truck which were captured as a result of the exclusive occupancy order, deal with the interim child and spousal support applications and the procedural issues, the judicial case conference and the case management conference.

- [105] The lawyer acknowledged in his cross-examination that his bills contained only three time entries of .1; that is April 26, 2007, October 30, 2007 and May 1, 2007. When asked why there were so few entries of .1, the lawyer's response was that the services recorded took longer.
- [106] The lawyer could not explain time entries of over 8 hours posted for September 11, 2007 for court attendances being one week ahead of the without notice application.
- [107] No explanation was given as to why the lawyer did not join the husband's companies at the time of issuing the writ and statement of claim. The lawyer had spent almost a year gathering documents, preparing lists, obtaining translations and putting together charts so that he could understand the nature of the husband's businesses and assets. The lawyer stated that joining these entities as defendants was for purposes of negotiation and a "powerful tool". Earlier in these reasons I quoted the client's proposed unsworn affidavit #8 at paragraphs 5 and 6, which stated that the purpose of joining the defendants was for purposes of disclosure and the obtaining of information. It may have been risky for the client to join these defendants for these purposes as she might have to face an award of costs against her.
- [108] From the outset, the lawyer's strategy was never clearly explained to the client, which it should have been and it should have been in writing. For instance, the lawyer said throughout his evidence that the client was pursuing her husband's global assets. Surely the client should have been advised as to her chances of success in pursuing her husband's global assets and the need to have them found to be a family asset. This is of considerable importance since the client was 40 years younger than her husband who was a wealthy businessman when she met him. The client should have been advised by the lawyer as to the effect of the reapportionment sections of the FRA, as well as those factors that make an asset a family asset and turn a business asset, into a family asset. This, as far as I can tell, was never done. Nor did the lawyer advise the client of the importance of the German marriage agreement.
- [109] The client, at the request of the lawyer, obtained a verbal opinion through her mother as to the effect of the German agreement in Germany, which was, that it was enforceable in Germany. The lawyer was vague as to whether he had spoken to a German lawyer as to the validity of the German agreement.

- [110] At this hearing, the client's lawyer cross-examined the lawyer on a number of items in bills for which the lawyer charged the client. On April 20, 2007 in bill #3, the client was charged for a two hour meeting for \$500.00. The lawyer's written notes for that meeting are one page. In putting this to the lawyer, his response was that the notes may not be complete.
- [111] In bill #5, the lawyer was asked about two entries on June 21, 2007, in which the client was charged for authoring an email for \$175.00 for .70 in time for responding to the client's email. The client was charged \$75.00 representing .30 in time. Both of these emails were relatively short. The lawyer's email consisted of two numbered paragraphs, single spaced, taking up two-thirds of a page. The advice related to whether an employee of the husband could move into the suite at the family home and asking and commenting on some documents. Prior to this entry, there are entries for June 11, 2007, which is receiving an email from the client for \$50.00, time .20, sending an email to the client at \$75.00 for .30 time; total \$375.00. These emails are of a minor consequence.
- [112] On October 11, 2007, in bill #7, the lawyer charged the client 6.9 hours for preparing an affidavit for M. Wagner at a cost of \$1,725.00. The explanation by the lawyer as to why it took so much time was that English was Ms. Wagner's second language.
- [113] In bill #7, the lawyers charged the client for preparation of her affidavit referred to as J.E. Blenk #2. Between October 8, 2007 and October 10, 2007, the amount charged to the client for this affidavit was \$4,925.00. On October 9, 2007, the lawyer charged the client a further \$1,525.00 for work done on that date. Of that time 8.5 hours was for work on the J.E. Blenk #2 affidavit to which I have just referred and the rest of the time, 2.1 hours: telephone call from client, review of documents from opposing counsel for a total of 10.6 hours in one day.
- [114] On December 12, 2007, the lawyer charged the client \$1,120.00 for 3.20 hours for the preparation of a chambers outline index. On December 16, 2007, the lawyer charged the client \$945.00 for 2.70 hours for the preparation of chambers record index for a total of \$2,065.00. On December 17, 2007, the lawyer charged the client \$1,960.00 for 5.6 hours for preparation of a chambers record re interim support application. On February 15, 2008, the lawyer charged the client \$1,365.00 for 3.9 hours for preparation of plaintiff's book of authorities, and on February 18, 2008, \$350.00 for one hours work for preparation of index for to authorities. These are matters that a secretary or legal assistant is likely to perform at much less the cost. These fees are not to be confused with the \$4,935.00 that the lawyer charged the client for Rule 51A Part I outline between December 12 and December 16, 2007, and a further rebuttal outline for which the client was charged \$2,380.00 on February 16, 2008.
- [115] On February 24, 25, and 26, of 2008, the client was charged 4.6 hours for "conducting legal research on the issue of adding corporations, 2.0 hours amending the writ of summons to add the corporations and 5.0 hours to amend the statement of claim and 1.9 hours preparation of a notice of motion to do all of the above. Total charge to the client: \$4,725.00 at the rate of \$350.00 per hour. These amendments were made for the purpose of alleging

that the client had made contributions to her husband's companies and seeking a declaration of an express, implied, resulting or constructive trust for the client in the husband's companies shares and assets in the alter ego trust and assets held in other trusts located in Europe. There is no claim against the companies, except perhaps an accounting. The lawyer's explanation for his time spent on these documents was that it took a lot of work and he took extensive time to locate the new defendants and their addresses.

- [116] The lawyer charged the client both before and after legal proceedings were started for legal research in addition to the opinion that the client asked for concerning removing the children to Europe. An example is in bill #2, legal research, \$2,925.00. In bills #3 and #4 there are charges to the client for legal research. There are numerous other examples of legal research, including research directed towards the German marriage agreement. None of this research seems to have been shared with the client or described at this hearing.
- [117] The lawyer charged the client \$50.00 for a telephone conversation with the process server and \$200.00 to meet with him. No explanation was provided by the lawyer as to why this required so much time.
- [118] From the evidence, the documents and the ten bills, I have been unable to determine the secretarial component of all of these bills.
- [119] The email correspondence from the client to the lawyer throughout the retainer, centred around what was happening in her household, her impatience with the fact that no action had been started, the difficulty she was having living with her husband, and day-to-day details as to what her children were doing. There was nothing in the correspondence from the client about going after her husband's global assets, or for that matter any particular asset other than the quarrel about releasing what the husband considered were his possessions and a company truck.
- [120] Throughout this hearing, the client was described as a "savvy and sophisticated client". It was never explained as to what her "savvy and sophisticated" related to. She did not know the law. She had not been given any opinions as to her chances of success under the FRA, the risk that the German marriage agreement posed, and the fact that there are reapportionment powers under the FRA that may relate to her situation. Without having opinions from the lawyer on these topics, the client could hardly be expected to instruct the lawyer with any confidence.
- [121] It was important to the client that the lawyer give her an opinion as to her removing herself and the children from Canada back to Europe. The lawyer gave her that written opinion. She accepted the opinion and did not go back to Europe with the children. For that opinion, the lawyer charged the client approximately \$5,000.00, particulars of which are detailed in bill #3.

- [122] The client stated that all she wanted was spousal and child support and custody or primary residence of her children, and that she was not trying to go after her husband's assets. This evidence is given by the client in hindsight. Over a period of one year the client was taking in all her husband's documents relating to his business affairs and ventures. These documents could would be relevant as to the division of property, but also as to money and income that the husband had available for child and spousal support. As stated earlier, the client's emails and communication with the lawyer revolved around the children and the need to have enough money to meet hers and the children's day-to-day expenses.
- [123] The lawyer in seeking the \$350,000.00 advance from the husband for the client's experts didn't seek the client's permission. She was not asked whether she wanted to risk her interest in the home in seeking this advance. In the end, the client concluded that the lawyer had his own agenda which was not her agenda, and it is for this reason that she terminated the lawyer's services.
- [124] The lawyer stated that the client was not prepared to settle or compromises her claims. There is no evidence before me that this was the case. The only dispute between the client and her husband, which the client refused to compromise, was the return of the husband's possessions and the company truck.
- [125] The second agreement stated:
- ... we confirm our advice to you and your acknowledgement and consent to the possibility that our eventual total legal accounts will be in excess of \$250,000.00.
- [126] By May 5, 2008, the cost of this litigation to the client was close to this amount. There was considerable more work to do.
- [127] I have considered s. 71 of the LPA and I have concluded that a number of the actions taken by the lawyer were not reasonably necessary and proper to conduct the client's proceedings, and in some instances not authorized by the client as at times she did not understand the conduct of her case. Pursuant to s. 71(4) of the LPA, there were complex parts to this case, particularly in understanding the husband's income and assets. As to the amount involved, the husband was a very wealthy man, however, it was never clear that the client understood the nature of the claims that the lawyer was making on her behalf. In my view, the lawyer's time was not reasonably spent, particularly some of the examples I have given in these reasons, his charges for doing secretarial and legal assistant's work at his hourly rates contained in the first and second agreements. The matter of support for the client and her children was important to her, and the interim maintenance application was a result with which she was satisfied.
- [128] Although the second agreement is not a contingency agreement, as they are not allowed in family law matters in accordance with the Law Society Rules, the second agreement, prepared by the lawyer, suggests that it was the client's idea that the lawyer receive 10% of the value of property awarded to her. The second agreement states the following :

... we confirm that you have informed us that you would consider it reasonable if our eventual legal accounts approximated 10% of the value of your entitlement to property at issue (being 10% of \$2,000,000.00 to \$10,000,000.00).

[129] Other than this statement in the second agreement, there was no evidence before me that the client or the lawyer expressed to one another this would be the ultimate property settlement.

[130] As a result of the submissions made on behalf of the client and the expert report of Mr. King and that of Mr. Smith, I tax the lawyer's fees at \$85,000.00. I have calculated the disbursements and taxes for which the client is obliged to pay as follows:

Photocopying expenses, particularly in bill #7:

\$148.80

Court filing expenses depicted in bill #9::

\$62.00

Court filing expenses depicted in bill #10:

In addition, the lawyer paid direct from trust:

Filing fees September 4, 2007:

Filing fees September 4, 2007,

Process server - paid October 9, 2007

I have calculated GST and PST on fees of \$85,000.00:

PST:

GST:

\$62.00

\$31.00 \$218.00

\$123.93

\$5,950.00

\$4,250.00

TOTAL:

\$10,845.73

SUMMARY

[131] I have taxed the lawyers' and law firms' bills at \$95,845.73.

COSTS

[132] Both counsel urged me to assess the costs summarily. The client has been successful in reducing the lawyer's bill by over one-sixth. The cost of Mr. King's report was \$5,712.00 for the client. The filing fee for the appointment is \$52.00 and photocopies of \$200.00. Given the fact that Mr. Smith's report was \$4,804.80, I have no problem stating that Mr. King's fee is a reasonable disbursement given that Mr. King reviewed six boxes which were the contents of the client's file which Mr. Smith did not. Mr. Smith's report was for purposes of commenting on Mr. King's expert report.

[133] The law firm and the lawyer presented a proposed bill of costs under Appendix B, Scale B for which they sought \$8,690.00 in fees, disbursements in the amount of \$7,078.80, for a total of \$15,768.80.

[134] I fix the client's costs at \$4,500.00 pursuant to s. 73(2)(b) of the LPA, and disbursements of \$5,964.00 for a total of \$10,464.00.

[135] The client has paid the lawyer \$99,888.98. This will require the lawyer to pay to the client the sum of \$4,043.25, together with interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79, as well as costs in the amount of \$10,464.00. Upon the calculation of the interest due to the client, I direct that a registrar sign a certificate in these proceedings.

JURISDICTION

[136] After hearing this taxation as a registrar and before issuing these reasons, I was appointed a Judge of the Supreme Court of British Columbia. A situation such as this was dealt with by Mr. Justice Edwards in *Nathanson v. Whiteny*, [1993] B.C.J. No. 1571. This case was appealed, however, on different grounds. In *Nathanson*, Mr. Justice Edwards states:

6. Counsel for the lawyer also argued that a judge has inherent jurisdiction to exercise the powers of a registrar, relying on *Ladner Downs v. Thauberger* (1983), 47 B.C.L.R. 121 (S.C.B.C.). In that case, Wallace, J. (as he then was) reviewed the relevant authorities. Based on them I conclude there are two principles which govern here.

First:

". . . the court has inherent jurisdiction to secure that the solicitor, as an officer of the court, is remunerated properly, and no more, for work done as a solicitor".

[Elec. Trades Union v. Tarlo, [1964] 2 W.L.R 1041 at 1050 per Wilberforce, J.]

Second:

"the inherent jurisdiction of the court may be invoked in an apparently inexhaustible variety of circumstances and may be exercised in different ways"

[I.H. Jacob The Inherent Jurisdiction of the Court (1970) adopted by Wallace, J. in Thauberger at p.130.]

7. Thauberger and the cases considered in it dealt with instances where the statutory regime for review of lawyers' bills did not operate to produce a just result. As Wallace, J. observed at p. 128, "The English courts have seen fit to exercise that inherent jurisdiction where the Solicitors Act did not entitle the applicant to have a bill of costs taxed."

8 I regard the present situation as analogous. Here the reference to a registrar made by Clancy, J. has failed to produce a review since the registrar (master) was precluded by a lacuna in the legislation from rendering a decision after ceasing to hold office.

9 This issue was not considered by Kirkpatrick, J. in her decision rendered as "Master". If it had been, I assume she would have exercised her inherent jurisdiction as a judge and rendered the decision she did.

12. The interests of justice and the timely and economical resolution of this case dictate that I exercise the inherent jurisdiction of the court to determine the proper remuneration for the lawyer in this case.

"H.C. Hyslop J."

HYSLOP J.

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