

CANADA / JUDGMENT

Lindsay Kenney LLP v. Winkler

2025 BCSC 1779

COURT

Supreme Court of British Columbia

DECIDED

12 September 2025

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2025 BCSC 1779 Lindsay Kenney LLP v. Winkler

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lindsay Kenney LLP v. Winkler,

2025 BCSC 1779

Date: 20250912

Docket: S1811047

Registry: Vancouver

Between:

Lindsay Kenney LLP

Law Firm

And

Thomas Winkler

Client

Before: Registrar Gaily

Reasons for Decision

Counsel for the Law Firm:

A.E. Thiele

(September 16-18, 2024)

D. Zhang

(September 17-18, 2024, March 12-14 and 21, 2025)

Client, appearing in person:

T. Winkler

Further Written Submissions of the Law Firm:

April 22 and May 21, 2025

Further Written Submissions of the Client:

May 13, 2025

Place and Dates of Hearing:

Vancouver, B.C.

September 16-18, 2024,

March 12-14 and 21, 2025

Place and Date of Decision:

Vancouver, B.C.

September 12, 2025

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Introduction

- [1] In 2018, Thomas Winkler (the "Client") initiated this proceeding under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA], seeking to review the 16 bills issued to him by Lindsay Kenney LLP (the "Law Firm" or "LK Law") for work performed from September 2016 through January 2019. Although initiated in 2018, this LPA review did not effectively commence until the fall of 2024 (as explained below).
- [2] Mr. Winkler was a respondent in family proceedings initiated against him in early 2016 by his former girlfriend ("A.J.E."), who asserted that she and Mr. Winkler had been in a marriage-like relationship, and sought spousal support and division of family assets. A.J.E. represented herself throughout the family proceedings. Mr. Winkler retained counsel who filed a response denying that Mr. Winkler and A.J.E. had been in a marriage-like relationship and, in the alternative, if found to be in a marriage-like relationship, that A.J.E. was bound by a cohabitation agreement signed in 2014 (the "Cohab"). Mr. Winkler terminated the solicitor-client relationship with this lawyer after a few months and was on record as representing himself.
- [3] On the recommendation of the lawyer who witnessed his signature on the Cohab, Mr. Winkler contacted Angela Thiele at LK Law to assist him with a judicial case conference ("JCC") and on September 23, 2016, he signed a retainer agreement with LK Law to assist him with the JCC (the "Retainer"). The Retainer provides that if Mr. Winkler wished to retain LK Law "for more comprehensive representation in the future, the terms of this retainer agreement will also govern that retainer". Mr. Winkler subsequently confirmed in an email that he required the Law Firm's assistance for document production and discoveries, and Ms. Thiele and her colleagues represented him at various pre-trial stages when he was on record as self-represented.
- [4] On June 30, 2017, LK Law filed a notice of appointment of solicitor, in advance of the ten-day trial that proceeded before Justice Milman in July and August 2017. In the judgment he released in September 2017 (A.J.E. v. T.B.W., 2017 BCSC 1657), (the "Trial Reasons"), Milman J. found that A.J.E. and Mr. Winkler had been living in a marriage-like relationship for three and a half years and were spouses under the Family Law Act, SBC 2011 c. 25 [FLA]. He awarded A.J.E. \$172,342.34 (her 20% share of the family property and lump sum spousal support). Milman J. expressly noted that the alternative defence of the Cohab had been abandoned at trial (Trial Reasons, para. 5).[1] A.J.E. brought several post-trial applications

and initiated an appeal from Milman J.'s judgment. On April 26, 2018, Mr. Winkler filed a notice of intention to act in person. Mr. Winkler subsequently settled the appeal with A.J.E. for \$50,000. Milman J. later awarded A.J.E. her costs of the family trial (assessed at approximately \$37,000), and in a hearing before the registrar, Mr. Winkler agreed to pay A.J.E. \$3,000 to compensate her for personal belongings that were not returned to her after the relationship ended.

- [5] The Law Firm billed Mr. Winkler a total of \$159,190.70 and by the time this LPA review began before me, Mr. Winkler had paid LK Law \$155,320.38, with a balance of \$3,870.35 outstanding. Mr. Winkler submits that I should reduce the LK Law fees to \$63,000. The evidence before me establishes that Mr. Winkler continued to instruct and seek advice from LK Law throughout the relevant period when he was on record as self represented (from September 2016 through June 2017 and from April 2018 through January 2019), including after he had filed the appointment commencing this LPA review in October 2018. Mr. Winkler does not dispute that he continued to email Ms. Thiele and her colleagues with questions about the ongoing family proceedings, but he asserts that the fees he was charged, particularly for the period after the trial, are excessive or that the work was unnecessary.
- [6] These parties have appeared before the court for this LPA review over 11 times, and Mr. Winkler represented himself in all but one appearance. In addition to the seven hearing days before me, they attended two pre-hearing conferences ("PHC"). Presiders ordered the hearing adjourned twice and it did not recommence for over four years. In my view, the amount of court time this LPA review proceeding occupied is disproportionately high to the fees under review.
- [7] For the reasons detailed below, I find that in the circumstances of this case and considering the factors set out under s. 71(4) of the LPA, the fees charged by the Law Firm should be reduced by \$15,708.04, reflecting what I find to be some excessive time recorded and billed in the post-trial period.
- [8] The amount I have allowed is not a reduction of more than 1/6th of the amount owing, and under s. 72(1)(a) of the LPA, the Law Firm is entitled to the costs of the LPA review payable by Mr. Winkler. Although I have no doubt that Mr. Winkler will contest the costs claimed by LK Law for these lengthy LPA review proceedings, I do not exercise my discretion under s. 73 to summarily determine them.

Summary of the LPA Proceedings and related litigation

- [9] On October 12, 2018, Mr. Winkler filed the appointment commencing this LPA review, setting the hearing in early December 2018. The determination of the costs of the family proceedings (as well as their assessment), and the assessment of the value of A.J.E.'s personal belongings, which had not been returned to her (the "Chattels Assessment") were still before the court.

- [10] On December 3, 2018, Mr. Winkler and Kelsey Corrigan, counsel for LK Law, appeared before Master Taylor (now referred to as Associate Judge, which is the title I will use in this decision[2]), sitting as registrar. The hearing was set for 30 minutes, which is the time allotted to a PHC. At that PHC, LK Law was ordered to provide Mr. Winkler all its pre-bills, and the hearing was adjourned to be rescheduled for two days. Mr. Winkler filed a second appointment on March 18, 2019, setting the hearing for four days starting on August 19, 2019. Mr. Winkler attached to this appointment a list of objections he had prepared in December 2018, as well as copies of the LK Law bills issued to him through January 31, 2019.
- [11] Mr. Winkler said that he did not receive the pre-bills from LK Law until July 2019, the month before the LPA review was scheduled. Ms. Thiele testified that Mr. Winkler filed a professional conduct complaint with the Law Society of BC ("LSBC") against her arising from the late production of the pre-bills, but that the complaint did not lead to disciplinary proceedings. When he was questioned about the result of the LSBC complaint, Mr. Winkler said that he did not know what had happened because the LSBC is "so secretive", but he thought the LSBC had told Ms. Thiele it was a problem to have delayed producing the pre-bills.
- [12] In October 2016, shortly after he had retained Ms. Thiele, Mr. Winkler initiated LPA proceedings against Watson Goepel LLP ("WG"), the law firm that he retained that filed his response to the family claim (the "WG LPA"). The WG LPA hearing proceeded on August 16, 2019, which was a Friday, before Associate Judge Elwood (as he then was), sitting as registrar. In oral reasons released the same day, Elwood A.J. noted that WG acknowledged some errors in its billing and had reduced their fees when issuing their bills to Mr. Winkler. He declined to reduce the WG fees further, but he did not order Mr. Winkler to pay the costs of the LPA review (the ordinary course under s. 72 of the LPA when a law firm's fees are not reduced by more than one-sixth of the total).
- [13] The hearing date of August 19, 2019, fell on the Monday following the hearing before Elwood A.J. of the WG LPA. The Law Firm filed the following three affidavits of justification for this LPA review: the first affidavit of Ms. Thiele, filed on August 12, 2019 (the "Thiele Affidavit") (which is 39 pages long at 181 paragraphs and, with its exhibits, fills three and a half large binders); the first affidavit of Ms. Corrigan, filed on August 15, 2019 (the "Corrigan Affidavit"); and the first affidavit of Anna Milgrom, Ms. Thiele's legal assistant, filed on August 16, 2019 (the "Milgrom Affidavit").
- [14] When the parties appeared before Registrar Nielsen on August 19, Mr. Winkler sought an adjournment because he had not had time to review the affidavits, which he submitted were not filed in compliance with the Supreme Court Civil Rules [SCCR]. At that time, LK Law held funds from Mr. Winkler in trust (approximately \$35,000). Ms. Thiele opposed the adjournment, but submitted that if it was ordered adjourned, she sought an order permitting LK Law to apply the funds held in trust towards the fees owing without prejudice to Mr. Winkler. Registrar Nielsen adjourned the LPA review generally because of the late-filed affidavits. He also ordered that LK Law could apply the funds held in trust towards the

outstanding fees, explaining to Mr. Winkler that this would not prejudice his right to recover fees if the registrar determined that the LK Law fees should be reduced, and that this would reduce the amount of interest that LK Law could charge. Registrar Nielsen ordered that the costs before him were to be determined at the substantive hearing. During the proceedings before me, Mr. Winkler repeatedly asserted that Ms. Thiele "lies to the court" and he pointed to the appearance before Registrar Nielsen as an example, submitting that the transcript was evidence of how Ms. Thiele and her colleagues "don't follow simple Rules".

- [15] On September 11, 2019, Mr. Winkler filed a requisition rescheduling the LPA review for a four-day hearing commencing on October 7, 2019. On September 12, the Law Firm filed its own appointment in this LPA proceeding, also setting the hearing for four days commencing on October 7, 2019. In late September 2019, Mr. Winkler retained counsel to represent him at this LPA review.
- [16] After he had commenced this LPA review, Mr. Winkler commenced an action in negligence against LK Law in Small Claims Court in which he alleged that Ms. Thiele's failure to advance the Cohab as a defence at the trial caused him loss (the "LK Action"). When the parties appeared before Associate Judge Cameron (sitting as registrar) on October 7, he was advised that Mr. Winkler had commenced the LK Action. As a result, Cameron A.J. ordered the LPA review adjourned generally and ordered that before another hearing date was set, the parties were to attend a PHC. He also ordered the parties to bear their own costs for the appearance before him. Mr. Winkler was represented by counsel at that appearance before Cameron A.J., but he filed a notice of intention to act in person two days later (on October 9, 2019).
- [17] Between October 2019 and January 2024, no steps were taken in this LPA review, but Mr. Winkler pursued the negligence actions he had commenced in the Small Claims Court against Ms. Thiele, as well as against the lawyer who had witnessed his signature on the Cohab (the "Boughton Action").
- [18] On June 4, 2021, Provincial Court Judge Brownstone dismissed the Boughton Action and ordered Mr. Winkler to pay the reasonable expenses of Boughton Law Corporation (the "Boughton Reasons"[3]). LK Law included in the hearing record a copy of the Boughton Reasons, as well as excerpts of the transcript of the proceedings before Judge Brownstone on April 20, 2021. When asked about the Boughton Action and Ms. Thiele's evidence at that trial under cross-examination, Mr. Winkler first said he could not remember what happened and then objected to the Boughton Reasons being put to him, asserting it was not relevant to this LPA review. Because of his repeated submissions that Ms. Thiele lies and failed to follow his instructions regarding the use of the Cohab as a defence at the trial before Milman J., I allowed LK Law to question Mr. Winkler about the Boughton Action. Ms. Thiele testified as a witness for Mr. Winkler at the Boughton Action[4] (he had subpoenaed her to appear) and Judge Brownstone noted that neither Mr. Winkler (nor Boughton) challenged her evidence and she found it credible.[5]

- [19] With respect to the LK Action, under cross-examination, Mr. Winkler admitted that the Provincial Court had ordered him to obtain an expert opinion prior to the trial. He testified that because his father was ill, he could not get an expert report in the time ordered and had tried to "put the LK Action on hold". He alleged that the lawyer representing LK Law unilaterally set a court date for which he was not available, and that because he had not filed the expert report in compliance with the court order, the LK Action was dismissed. I was advised that Mr. Winkler was ordered to pay LK Law's costs by the Provincial Court. A copy of the expert report LK Law commissioned for the LK Action was included in the hearing record.
- [20] The Law Firm filed a requisition on January 9, 2024, resetting the LPA review hearing by consent and scheduling a PHC on March 28, 2024. On March 15, before the PHC, Mr. Winkler filed a requisition resetting the hearing for three days, starting on September 16, 2024. When the parties appeared at the PHC, Ms. Thiele advised that she might not be available for the hearing starting on September 16 and Mr. Winkler had set the dates unilaterally. I directed Ms. Thiele to advise Mr. Winkler and Scheduling as soon as she knew her availability, rescheduling the hearing if necessary. At the PHC, I ordered Mr. Winkler to prepare a written list of particularized objections to the LK Law bills and serve it on the Law Firm by April 30, 2024. I also ordered that, if necessary, LK Law could file further affidavits of justification in response to the particularized objections.
- [21] The hearing commenced on September 16, 2024. The Law Firm filed a four-volume hearing record and a book of accounts consisting of copies of the 16 invoices LK Law issued to Mr. Winkler, together with the pre-bills on which the invoices were based. Mr. Winkler's affidavit, which he filed on August 29, 2024 (the "Winkler Affidavit"), was not included in the hearing record but was tendered as Exhibit #6. The Winkler Affidavit filled one large binder and, among other things, exhibited the transcripts of the earlier appearances before Taylor A.J. in 2018 (Ex. 2) and Registrar Nielsen in 2019 (Ex. 4), as well as portions of the trial transcript from August 4, 2017 (Ex. 15).
- [22] LK Law's witnesses were Ms. Thiele and Ms. Corrigan. The hearing did not conclude after the first three days and could not be continued until March 2025 given Mr. Winkler's schedule. The hearing continued for a further three days beginning on March 12, 2025, but a final seventh day was required, on March 21. For the first five days, Ms. Thiele and Ms. Corrigan spoke to their affidavits and were cross-examined by Mr. Winkler. During Ms. Corrigan's testimony, the Law Firm tendered an additional book of documents and despite Mr. Winkler's objection, I allowed the evidence as it consisted of contemporaneous emails exchanged between Mr. Winkler and Ms. Corrigan, which Mr. Winkler did not deny sending and/or receiving. Over the next two days, Mr. Winkler gave evidence and was cross-examined by Derek Zhang, counsel for LK Law. At the conclusion of the evidence, I ordered the parties to file written closing submissions, which I received in April and May 2025.

- [23] The witnesses testified five years after LK Law issued its final invoice to Mr. Winkler and eight years after some of the work for which he was charged had been conducted. Ms. Corrigan was an articulated student for most of the time she performed work on Mr. Winkler's file, acting under the direction of Ms. Thiele and other lawyers at the Law Firm. Although Ms. Thiele and Ms. Corrigan had reviewed their respective affidavits, they could not recall all the details of their work on the file or Mr. Winkler's specific instructions when cross-examined. However, I find that their testimony was generally supported by the contemporaneous emails exhibited to their affidavits and in evidence before me.
- [24] Mr. Winkler is clearly still aggrieved about the outcome of the family proceedings with A.J.E. and blames lawyers and the legal system for the results. This was evident in his testimony before me. For example, he denied knowing when he had commenced this LPA proceeding and when asked if he had sued the lawyer who witnessed his signature on the Cohab (the Boughton Action), he said he "could not recall." I found him to be combative under cross-examination, going so far as to deny the accuracy of evidence that he himself had led (particularly with respect to obtaining documents from the HSBC, discussed below). My experience of Mr. Winkler's testimony is like that commented on by Judge Brownstone in the Boughton Reasons.[6] I found Mr. Winkler's evidence to be self-serving and lacking credibility on many occasions.
- [25] Where Mr. Winkler's evidence conflicts with the evidence of Ms. Corrigan and Ms. Thiele, I prefer their evidence to his.

Summary of the Family Proceedings and the Work Performed

- [26] Before me, Mr. Winkler repeatedly challenged the work that LK Law did for him, maintaining that he had not instructed them to perform certain activities, particularly after the trial concluded. He denied that he was a demanding client who was difficult to communicate with. For this reason, this portion of my decision is lengthier than it should be, and although I do not refer to every exhibit in the affidavits to demonstrate the nature of the Client's approach to his family file and the way he communicated with his counsel, I am satisfied on the evidence before me that the Client continued to seek LK Law's advice into 2019.
- [27] The FLA came into effect in March 2013. Among other things, the FLA defined a "spouse" as "a person who has lived with another person in a marriage-like relationship and has done so for a continuous period of at least two years" (s. 3). The FLA no longer referred to "common law" relationships. At the time of the family proceedings, the FLA was new legislation and there were few authorities considering the provisions defining "spouse" and "marriage-like relationship".
- [28] In the Trial Reasons, Milman J. described the background and history of A.J.E. and Mr. Winkler's relationship and I will not repeat it here. At the time of the family proceedings and the retainer, Mr. Winkler was retired and earned income through his investments. He lived

in a place he owned on West 2nd Avenue in Vancouver, BC. He also owned a recreational property on an island, as well as a boat and a vehicle. In 2015, after the relationship with A.J.E. ended, Mr. Winkler sold two properties he had owned in Vancouver, a condo on Richards Street and a home on West 6th Avenue where he had been living during the relationship with A.J.E. (the "West 6th Property"). A.J.E. had been a teaching assistant, but she had quit her employment to spend time sailing with Mr. Winkler. The evidence before me was that A.J.E. received a disability pension because she had mental health issues. Both parties were previously married and had children with their former spouses.

- [29] Although their relationship appeared to be ending in the summer of 2014, there is no dispute that in late August/early September 2014, Mr. Winkler and A.J.E. signed the Cohab. Mr. Winkler had asked A.J.E. to sign the Cohab, which she did on August 27, 2014, but she did not obtain independent legal advice ("ILA") or waive the ILA. Through a referral from one of his financial advisors, Mr. Winkler had arranged to meet with Maria Holman, an estate lawyer at Boughton Law Corporation, to prepare his will. Prior to their meeting, Mr. Winkler had emailed Ms. Holman a copy of the Cohab signed by A.J.E. asking her questions about the Cohab in the email. Mr. Winkler met with Ms. Holman on September 3, 2014, and she witnessed his signature on the Cohab at that time.
- [30] A.J.E. had commenced family proceedings against Mr. Winkler in April 2015, but she had discontinued the claim in September 2015 (Trial Reasons, para. 70). A.J.E. filed her second notice of family claim on February 16, 2016, and as noted, on April 15, 2016, Mr. Winkler's then lawyer, Laurence Klass at WG, filed the response to the family claim. In the response, Mr. Winkler denied the parties were ever in a marriage-like relationship and, in the alternative, if the court found that the parties were in a marriage-like relationship, Mr. Winkler sought "to rely on the [Cohab] entered into by the parties in August 2014". In May 2016, A.J.E. filed a JCC notice, scheduling it for December 9, 2016, as well as a trial notice, setting the trial for three days starting January 10, 2017. Mr. Klass had prepared an opinion for the Client about whether he could be found to be in a "marriage-like relationship", but he expressly stated that he was not asked to provide an opinion about the validity of the Cohab (the "Klass Opinion"). Mr. Klass also prepared an initial Form 8 financial statement ("F8"), which is required under the Supreme Court Family Rules [SCFR], but the F8 had not been filed and was not complete.
- [31] Under the SCFR, the parties to a family proceeding are generally required to attend a JCC before appearing in court. A.J.E. had scheduled the JCC for December 2016 but on September 6, 2016, Mr. Klass filed a requisition resetting the JCC earlier to September 28. Mr. Winkler terminated the solicitor-client relationship with WG in early September.
- [32] Mr. Winkler contacted Ms. Holman, and she referred him to Ms. Thiele at LK Law for help with the JCC. Mr. Winkler contacted Ms. Thiele on September 14, and they arranged to meet on September 23, 2016. Prior to their meeting, he emailed Ms. Thiele asking several questions, including, "what is your guestimate of legal cost" and "what expertise do you have to argue that this is not a marital relationship", and attaching several documents related to

the family proceeding, including the Klass Opinion (Thiele Affidavit, Ex. 6). Mr. Winkler executed the Retainer when he met with Ms. Thiele on September 23, 2016 (Thiele Affidavit, Ex. 8) (the terms of the Retainer are discussed below).

- [33] Mr. Winkler is an avid sailor and when he retained LK Law, he advised Ms. Thiele that he was frequently away from Vancouver on sailing trips and that he would be participating in a lengthy around-the-world sailing race, scheduled to start in 2017, which affected his availability for court proceedings. When Mr. Winkler was sailing, he was often away from port and had limited accessibility to email or phone, as evidenced in several emails exhibited to the affidavits before me.
- [34] Ms. Thiele testified that when she met with Mr. Winkler, she encouraged him to represent himself as much as possible as he was concerned about the cost of litigation. She said that because A.J.E. was self-represented, she told him that if he was also self-represented, the court would give both parties more leniency than it would to a lawyer facing a self-represented opposing party. She also testified that based on the early conversations she had with Mr. Winkler, she thought he had an arguable case he was not in a marriage-like relationship with A.J.E. She testified that her opinion changed once she received further information and documents from the Client and A.J.E.
- [35] On September 28, 2016, Mr. Winkler attended the JCC with Cassandra Drake, an associate at LK Law who is identified in the Retainer Agreement. At the time, Ms. Drake was a three-year call who worked with Ms. Thiele on family files. Ms. Thiele testified that she had told Mr. Winkler that it was more cost effective for Ms. Drake to attend the JCC than her. Mr. Winkler testified that he was surprised that Ms. Drake attended and not Ms. Thiele. His testified that he had told Ms. Thiele that he wanted a senior lawyer to represent him, given his experience when a junior lawyer represented him in unrelated criminal proceedings at which he was convicted of a criminal offence.
- [36] Justice Morellato conducted the JCC and she made orders that the trial was to be set for five days commencing July 17, 2017 (adjourning the dates secured by A.J.E.) and that the parties were to exchange their documents by January 15, 2017.
- [37] After the JCC finished, Mr. Winkler emailed Ashley Elischer, a family paralegal working with Ms. Thiele and Ms. Drake, asking her what documents were needed from him under the JCC order and advising that he would be leaving Vancouver the next week. He was provided a general list of suggested documents that the Law Firm uses to guide clients that was not specific to his case. On September 30, the Client provided LK Law with a bundle of documents he received from A.J.E., including a lengthy affidavit of A.J.E.
- [38] Ms. Drake communicated with the Client about the JCC and the documents he had provided in a letter she emailed to him on September 30, 2016, which Ms. Thiele confirmed she had reviewed with Ms. Drake (the "Drake Letter") (Thiele Affidavit, Ex. 12). In the Drake Letter, Ms. Drake confirmed that she and Ms. Thiele were holding the trial date in their calendars. She reiterated their advice that the Client should continue to represent himself for as long as

possible (with the hope that A.J.E. would want to settle to avoid prolonging her court matter with him). Acknowledging that the Client had not retained LK Law generally, Ms. Drake provided the Client with the following estimates of what it could cost him if they were to be retained:

In terms of ongoing legal costs to you, if we were representing you there would be certain steps we would recommend you take before the 5-day trial in this matter in July 2017, including:

1. A discovery of [A.J.E.] (who may in turn elect to discover you as well);
2. Ongoing and complete document disclosure; and
3. Scheduling a mediation or judicial settlement conference.

We would expect that preparation for and attendance at a full day discovery of [A.J.E.] could cost between \$5,000 and \$10,000 in fees, depending on whether you wish to have Ms. Thiele or [Ms. Drake] act for you. Preparation of your Lists of Documents and reviewing [A.J.E.'s] document disclosure on an ongoing basis would be charged to you based on our hourly rates, and the overall cost could depend on the volume of document disclosure. We would expect, depending on the volume of document disclosure and the evidence set out by each of you and [A.J.E.] that scheduling, preparing for and attending at a mediation or judicial settlement conference could cost another \$10,000 to \$15,000 in fees. Disbursements and taxes are not included in these estimates.

We also estimate that preparing for and attending at a five-day trial alone would cost another \$25,000 to \$30,000 in fees. Disbursements and taxes are not included in this estimate.

Please note that the above estimates are also not estimates for the day-to-day management of your file, which costs would be billed to you at our hourly rates as set out in our retainer letter.

Given all of the above, and given our belief that you could continue to competently represent yourself in this matter until you are closer to the trial date in July 2017, we would suggest you consider acting on your own behalf until sometime early in the New Year, and see if you might be able to negotiate a settlement with [A.J.E.] without the requirement of counsel being involved.

If you decide to retain us after your trip, please consider the timing of your request for representation upon your return so that we are not retained at the last minute before a court hearing or other urgent matter is imminent

[39] On October 3, the Client emailed Ms. Milgrom requesting a list of the specific documents he should provide to the Law Firm and advising that he was leaving for Grenada. Ms. Drake responded to him the same day, advising that they had provided him a general list as guidance and asking him to "gather all documents that you think may be relevant and we will review them before we produce them". Ms. Drake also referred to the Drake Letter, asking the Client to "please confirm that you wish to retain us on a comprehensive basis rather than on a limited retainer." The email thread is at Thiele Affidavit, Ex. 13.

[40] On October 28, Ms. Milgrom emailed the Client confirming LK Law had received his documents from his friend the previous day. In the email, Ms. Milgrom referred to the Drake Letter and Ms. Drake's October 3 email, stating "we would greatly appreciate receiving an email from you advising whether you are continuing to act for yourself in this matter or whether you are formally retaining us to represent you in this matter. We want to ensure that our instructions from you are clear so that neither you nor we misunderstand our roles in this litigation matter at this time" (Thiele Affidavit, Ex. 14).

[41] On November 14, Ms. Drake emailed the Client advising she and Ms. Elischer had reviewed the documents he provided and giving him comments about them. Ms. Drake mentions that LK Law had no record of a response from him to the Drake Letter and asking him to confirm his response (Thiele Affidavit, Ex. 16). The Client responded to Ms. Drake by email that same day, attaching a letter dated October 30, stating the following:

I like to respond to your letter dated Sept. 30, 2016.

My goal is to settle the claim asap. If you have any suggestion how to get there please advise.

In the mean time we have to go through preparing for trial.

In your letter you are mentioning steps prior to trial

I need your assistance in all of them.

As of you or Ms. Thiele representing me, I am unsure because I do not know your experience. Presently I am leaning towards Ms. Thiele because of her experience.

[He then set out his thoughts about a "24 month common law relationship" and what he considered his family assets]

When is the time you can provide a firm legal background on my situation.

After Nov 04, 2016 I am cruising and will have internet access maybe only once a week to 10 days.

(Thiele Affidavit, Ex. 19)

[42] Ms. Thiele testified that the Client's documents included several redacted and incomplete emails, and that while he was sailing, he had several email exchanges with her (and Ms. Drake and Ms. Elischer) about the redacted and incomplete emails. She also testified that because the Client was unavailable to provide the documents himself, LK Law staff conducted searches to obtain information about his properties, but the public searches did not reveal information about the earlier HSBC mortgage on his West 6th Property because it had been sold in 2015.

[43] In early January 2017, the Client contacted A.J.E. and directed her to contact Ms. Elischer at LK Law about exchanging documents and the same day, he confirmed in an email to Ms. Elischer that he wanted LK Law to help with the exchange of documents on his behalf. Ms. Drake provided the Client with the draft list of documents on January 9, 2017, explaining

that LK Law had obtained many of them for him and asking him to confirm his instructions to LK Law and reiterating that it was difficult to communicate with him only by email. In a reply email, the Client confirmed that he wanted Ms. Thiele to conduct an examination for discovery of A.J.E., and that he would like Ms. Thiele to run the trial (Thiele Affidavit, Ex. 27). LK Law prepared the Client's list of documents, which was exchanged with A.J.E. pursuant to the JCC order.

- [44] On February 15, 2017, A.J.E. emailed the Client and offered to settle the family claim for \$75,000 (Thiele Affidavit, Ex. 29). The Client countered for \$75,000 less the legal fees he had paid to Boughton Law Corporation, WG and LK Law, plus an airplane ticket he had purchased. A.J.E. rejected the Client's counteroffer. Ms. Thiele testified that she advised the Client to hold off settling with A.J.E. until after the examination for discovery, which he did. A.J.E. provided her list of documents on February 23 and the next day (February 24), Ms. Thiele conducted a full-day discovery of A.J.E., which the Client also attended.
- [45] After this discovery, Ms. Thiele testified that she advised the Client that he was vulnerable to the court finding that he and A.J.E. had been in a marriage-like relationship and he risked having to pay spousal support and a portion of the increased value of his assets and she strongly encouraged him to settle (see also Thiele Affidavit, Exs. 32 and 33). In late February and early March, the Client offered to settle with A.J.E. for \$45,000, but A.J.E. maintained she would not settle for less than \$75,000. Ms. Thiele testified that she continued to encourage the Client to settle with A.J.E. for \$75,000 (see Thiele Affidavit, Ex. 41).
- [46] Before agreeing to settle with A.J.E., Mr. Winkler asked Ms. Thiele to provide him a formal legal opinion, which he thought should cost him about \$1,000. Mr. Winkler testified that Ms. Thiele had never provided him with a legal opinion but had simply told him the Cohab was not valid. There was evidence before Judge Brownstone in the Boughton Action that Mr. Winkler had contacted Ms. Holman in May 2017 to tell her that his family lawyer (Ms. Thiele) had advised him that the Cohab was "not worth the paper it was printed on" (Boughton Reasons, para. 35).
- [47] Ms. Thiele testified that she had told the Client that the Cohab was not valid, particularly because A.J.E. failed to receive ILA before signing it, and she had set this out in a few emails to him, but he was insistent about receiving a formal legal opinion about it and his case. She said that Ms. Drake advised the Client that she had provided her verbal opinion to him and if he wanted a formal legal opinion, it would cost him \$2,500 to \$4,000 (see Thiele Affidavit, Ex. 44). Ms. Thiele acknowledged that she did not provide a formal opinion to the Client despite his requests because she felt it was a waste of his money and that she had told him her opinion about it several times. For example, in an email dated May 2, 2017, Ms. Thiele wrote the following to Mr. Winkler:

As I have told you several times a formal legal opinion is a waste of my time and your money. You are wasting money arguing with us about the necessity for a formal opinion and what it should cost. You should be instructing us to get this settled. You are in an extremely vulnerable position and you are not listening to my advice I am on vacation and taking the time to respond to your email to try to impress upon you that you are making a serious error in being stubborn about your need for a formal opinion and your refusal to provide settlement instructions.

(Thiele Affidavit, Ex. 47)

- [48] Ms. Thiele testified that at this time (May 2017), she provided the Client with the decision of Taylor A.J. (sitting as registrar on a review under the LPA) in *Lindsay Kenney LLP v. Yehia*, 2016 BCSC 2121. In the case, Ms. Thiele provided her former client with her legal opinions and advice in emails and her fees were not reduced. The Client eventually agreed to settle with A.J.E. for \$75,000 and LK Law sent A.J.E. a formal settlement offer on May 12, 2017, accepting her offer of \$75,000 (which A.J.E. had never retracted) and attaching a consent dismissal order and release for her to sign (Thiele Affidavit, Ex. 53). The Client does not dispute that he agreed to offer (or to accept A.J.E.'s original offer) to settle for \$75,000. Ms. Thiele testified that she discussed the settlement with A.J.E. on the telephone, but A.J.E. sought further financial disclosure from the Client before she would agree, which he refused to do, and balked at signing a release.
- [49] In late May 2017, Ms. Thiele provided the Client with a chart setting out her estimate of his financial exposure if A.J.E. was found to be his spouse, based on the real property he owned, which exposure she estimated at over \$400,000 (Thiele Affidavit, Ex. 56). Ms. Thiele and her colleagues began to prepare for the trial, but Ms. Thiele testified that it was difficult to communicate with the Client as he was sailing and she exhibited to her affidavit several emails from him in which he states that he is unavailable because of his sailing schedule, which the Client did not dispute sending to her and her colleagues.
- [50] In May and June 2017, LK Law staff gathered documents for the Client's F8 and on June 1, Ms. Elischer provided the Client a draft F8 for his review by email. The SCFR requires the F8 to be finalized and filed before trial. Ms. Thiele testified that her assistant and paralegal spent a great deal of time attempting to gather the information from financial institutions, but it was difficult for the Law Firm to obtain the Client's authority to contact his financial institutions directly on his behalf and secure the relevant records. This consent was obtained on June 1, 2017.
- [51] On June 19, 2017, Ms. Thiele and Ms. Corrigan (then an articling student) appeared for the Client at the trial management conference ("TMC") conducted by Associate Judge Tokarek. Among other things, based on the information before him, Tokarek A.J. ordered the trial was to proceed as scheduled on July 17, but extended it to ten days instead of five. Ms. Thiele testified that she emailed the Client after the TMC to tell him about the increased length of the trial ordered by Tokarek A.J. Before me, Mr. Winkler maintained that he was not advised about the increased length of the trial and that he should have been provided an updated

cost estimate.

- [52] Ms. Thiele testified that before the trial, she sought A.J.E.'s agreement on documents, but A.J.E. refused to agree and sought further disclosure from the Client. A.J.E. filed an application seeking an order that Ms. Thiele provide her with a copy of the discovery transcript and that the court set dates for the parties to exchange documents. At that point, LK Law filed the notice of appointment as the Client's solicitor on June 30, 2017. Ms. Thiele was able to obtain A.J.E.'s agreement on document exchanges the day before the hearing and on July 4, A.J.E. and Ms. Corrigan appeared before Justice Russell who ordered by consent, that Ms. Thiele was to provide a copy of the discovery transcript to A.J.E. and the parties were to exchange documents on July 10. (Russell J.'s order was not settled and entered until May 14, 2018, before Associate Judge Harper (sitting as registrar).)
- [53] Ms. Thiele testified that she met with A.J.E. in early July 2017, attempting to settle the matter, but the negotiations were unsuccessful. Ms. Thiele also testified that they had been unable to get the Client's instructions to have the properties appraised before the trial because he questioned the necessity of it. The Client returned to Vancouver in late June 2017, when he was able to obtain further financial records, and his F8 was finalized and filed on July 13, 2017.
- [54] Although the trial was scheduled to start on July 17, it did not begin until July 24. Ms. Thiele testified that during the week of July 17, she continued to encourage the Client to settle because she was concerned that he faced financial risk in maintaining at trial that the parties were never in a marriage-like relationship. She encouraged him to settle for between \$90,000 to \$100,000 and he instructed them to offer A.J.E. \$90,000, which they did, but A.J.E. rejected the offer. The Client authorized LK Law to obtain an historical appraisal of his real property on July 21, three days before the trial started. Before me, he maintained that Ms. Thiele was negligent for failing to file a joint expert appraisal report as required under the SCFR and I should reduce her fees because of this. The evidence before me was that the Client asked Ms. Thiele again to provide him with a formal legal opinion July 21, three days before the trial. She did not provide him with a formal legal opinion in that period.
- [55] The trial commenced on July 24. Ms. Thiele testified that A.J.E.'s case took the first week and that in addition to A.J.E., two of her children testified as her witnesses. A.J.E. submitted evidence at the trial regarding the Client's criminal conviction and Ms. Thiele testified Milman J. instructed the parties to prepare submissions about the admissibility of that evidence (but it is not referred to in the Trial Reasons). Ms. Thiele and Ms. Corrigan testified that they worked over the weekend between the first and second weeks of trial and met with the Client on the Sunday to prepare him for his testimony. The second week of the trial, the Client testified, as well as one of his children, a work colleague and his accountant. Ms. Thiele testified that she prepared and conducted cross-examinations of A.J.E. and her children, as well as the direct of Mr. Winkler and the other witnesses called on his behalf.

- [56] Ms. Thiele testified that some of the Client's tax returns from the relevant years, which had been downloaded from the CRA website, indicated that the Client was in a common law relationship, although he was adamant he had never indicated that on his tax returns. Ms. Thiele testified that they had to call the Client's tax accountant as a witness on short notice to explain the situation. The accountant could not explain the discrepancy, and the Client denied he had ever indicated on his tax returns that he was in a common law relationship and it must have been done by A.J.E. and the CRA. Milman J. found this was plausible (see Trial Reasons, paras. 121-122) (Mr. Winkler also sued the accountant in the LK Action).
- [57] At the end of the second last day of the trial, A.J.E. raised for the first time the issue that the Client also owed her the value of her personal property that he had not returned to her (A.J.E. had not testified about the chattels and had not cross-examined the Client about them). Ms. Thiele testified that the Client had told her that A.J.E.'s personal belongings were not worth very much. Ms. Thiele acknowledges that she suggested to Milman J. during the exchange on this issue that A.J.E. should prepare a list of her chattels, which could be provided to the Client so he could return them to her or pay her for their value. As reflected in the transcript and acknowledged by Ms. Thiele, she suggested this without the Client's instructions. Ms. Thiele testified that the issue was raised when there was only one day left in the trial and the Client was leaving on his sailing trip right after the trial ended. She did not want to extend the trial further and she thought it was a workable solution. Mr. Winkler maintains that this was unethical of Ms. Thiele and caused him loss because he had to prepare for and attend the Chattels Assessment, at which he testified he agreed to pay A.J.E. \$3,000 for the chattels.
- [58] In the Trial Reasons, Milman J. noted that although Mr. Winkler had originally plead the Cohab in answer to A.J.E.'s claim, that defence was abandoned at the trial and his main defence was to deny that the parties were ever in a marriage-like relationship (para. 5). Mr. Winkler maintains that Ms. Thiele should have raised the Cohab as a defence, and he also testified that he was surprised that she abandoned it.[7] Ms. Thiele testified that she had advised the Client on more than one occasion that she would not argue the Cohab as a defence. I find Ms. Thiele's evidence more credible than Mr. Winkler's on this issue.
- [59] Ms. Thiele testified that based on the evidence, she was concerned that the court would find that the Client and A.J.E. had been in a marriage-like relationship, but she followed the Client's instructions to deny it and argued for an unequal division of property in the event the court found a marriage-like relationship. After the trial concluded, the Client left the country to sail. In August 2017, A.J.E. emailed LK Law with a list of the chattels she claimed from Mr. Winkler, valuing them at approximately \$10,000, which was more than A.J.E. had claimed in an email to the Client in 2015. In October 2017, A.J.E. increased the amount to \$11,000.
- [60] As set out in the Trial Reasons, Milman J. found that A.J.E. and Mr. Winkler had been living in a marriage-like relationship for three and a half years and he awarded A.J.E. lump sum spousal support (\$19,000). He found it was appropriate to unequally divide the family assets,

awarding A.J.E. 20% of the assets (\$153,342.34). He granted the parties liberty to speak to costs. Ms. Thiele testified that she was concerned about the way that Milman J. had valued the family assets for the purposes of dividing them. Ms. Thiele emailed the Trial Reasons to the Client. Mr. Winkler responded asking her how to deal with the court's "mistakes".

- [61] Mr. Winkler testified that after the Trial Reasons were released, because he was sailing, he arranged to have a bank draft to pay A.J.E. the judgment owing and for LK Law to deliver it to her. Ms. Thiele testified that A.J.E. refused to pick up the bank draft. The Client testified that he did not expect anything further from the LK Law lawyers after the trial, but they continued billing him. He does not deny that he continued to email Ms. Thiele and her colleagues about the ongoing proceedings asking for their assistance, as evidenced in the emails exhibited to the affidavits before me, but he asserts that they did more work than was necessary or than he authorized.
- [62] After the Trial Reasons were released, A.J.E. contacted Scheduling seeking a full day hearing before Milman J. to clarify certain issues and to determine costs, and she communicated with Ms. Thiele attempting to schedule dates for this hearing.
- [63] A.J.E. also appealed from the Trial Reasons in October 2017 but instead of filing a notice of appeal, she filed an application for leave to appeal setting a hearing in the BC Court of Appeal chambers in late October. LK Law emailed the Client asking if he wanted to retain them to represent him at the appeal. The Client asked if he could represent himself at the appeal and if it could wait until he was finished his sailing trip in 2018. Ms. Thiele advised him in an email dated October 21, 2017, that she did not think he could wait a year, but she could go off the record and he could provide an address for service so that LK Law would no longer be served with A.J.E.'s materials. She wrote,

I will show up in court before Justice Milman in January with the bank draft I have been trying to give her and say I am off the record and here is the judgment amount that I have been trying to give her for months and I am only here to try to give her the bank draft again. I don't think she will get that much more money from you, she is going to get something for court costs and something for the possessions. The difference between court costs with someone there saying something on your behalf and no one there might be 20,000, the possessions judgment with no one there to say something might be 11,000. I don't want to keep billing you when she shows up at the office but I should go to the court once before the judge so he knows she has been offered the judgment offer and refused to take it because that will help you on the court costs. (Corrigan Affidavit, para. 17 and Ex. 9).

- [64] The Client emailed Ms. Thiele and Ms. Elischer on October 23 stating that he hoped to have the appeal heard when he was back in Vancouver in April 2018 and "in the mean time I would like that you keep representing me, spending as little time as possible" (Corrigan Affidavit, para. 19 and Ex. 11). He emailed Ms. Elischer on October 27, 2017, to advise he had created a specific email for correspondence relating to the appeal and had told A.J.E. to send correspondence and serve documents to that address. He asked that LK Law also use that

email and wrote, "I would like to ask you [Ms. Elischer] that you check this account 2 times a week to act on any legal matters with a deadline" providing the password for the account (Corrigan Affidavit, para. 23, and Ex. 15). LK Law advised A.J.E. and the BC Court of Appeal registry that they were not representing the Client on the appeal.

- [65] A.J.E. emailed Scheduling regarding the appearance before Milman J., reducing the time from one day to an hour, and scheduling the hearing on November 22, 2017. A.J.E. continued to email Ms. Thiele about the value of the chattels she alleged Mr. Winkler had retained, to which Ms. Thiele responded advising that they did not have instructions on the issue. A.J.E. emailed and wrote Ms. Thiele demanding payment of \$11,252 for her chattels.
- [66] Ms. Thiele directed Ms. Elischer to email the Client updating him about the upcoming hearing before Milman J. In the email sent on November 21 (the day before the hearing), Ms. Elischer advised the Client that A.J.E. "wishes to discuss things like her alleged chattels, court costs and historical appraisals, among other things. [Ms. Thiele] is going to attend the hearing to try and sort out the court costs and chattels issue. She is also going to deliver the judgment bank draft to [A.J.E.] in front of the Judge, so that we can get that issue dealt with" (Corrigan Affidavit, para. 30 and Ex. 21). In this email, Ms. Elischer conveys that Ms. Thiele had asked A.J.E. to "prepare her bill of costs for the trial, so we can discuss it with you. However, [A.J.E.] has been unable or unwilling to do so, and [Ms. Thiele] wanted to have a rough idea of what court costs award you could be looking at for the trial. As such, we have done a draft bill of costs, which for the 10-day trial totals \$30,625. [Ms. Thiele] wants you to review the bill of costs, attached, so that you have an idea of what further amount(s) may be owing to [A.J.E]."
- [67] The Client did not respond to Ms. Elischer's email. On November 22, 2017, A.J.E., Ms. Thiele and Ms. Corrigan, appeared before Milman J. Ms. Corrigan testified that she emailed the Client the next day, advising that Ms. Thiele had provided the bank draft to A.J.E. in court. She testified that at the hearing, Milman J. had suggested that if A.J.E. and the Client were unable to agree on her chattels, they could schedule a registrar's hearing to determine their value. Milman J. also advised that costs could be spoken to at the one-day hearing before him scheduled in January 2018, but the other issues were for the appeal. In the reporting email, Ms. Corrigan advised the Client that A.J.E. was entitled to her costs and that they had calculated costs in the amount of \$30,500, but that A.J.E. could seek increased costs so it could be higher.
- [68] Ms. Corrigan testified that Mr. Winkler emailed her about a week later and, among other things, wrote regarding the draft bill of costs "I have never seen a more ridiculous document. What does the \$30,000 represent. Please advise about my options of what is the least I would have to pay and how likely is that the judge accept that." (Corrigan Affidavit, Ex. 24). Ms. Corrigan testified that the Client continued to send emails challenging LK Law's estimate of the costs to which A.J.E. would be entitled, arguing that her income was lower than the costs claimed and she represented herself throughout the proceedings. Before me, Mr. Winkler maintained that the draft bill of costs prepared by LK Law was ridiculous and

unnecessary.

- [69] On December 4, 2017, Ms. Corrigan sent the Client an email, which Ms. Thiele confirmed she had reviewed and approved because Ms. Corrigan was an articling student at the time, advising him that as LK Law was not representing him on the appeal, they could not monitor the email as he had requested. With respect to the costs A.J.E. could be awarded, Ms. Corrigan wrote explaining that the costs estimate was based on the tariff under the SCFR and that courts award costs to self-represented litigants. She also suggested that it would be more cost effective for the Client to make an offer to A.J.E. for costs on the ordinary scale and to advise them if he wished to do so.
- [70] At the hearing in the BC Court of Appeal chambers dealing with A.J.E.'s application for leave to appeal, a justice had ordered A.J.E. to schedule a hearing before the BC Court of Appeal Registrar regarding transcripts within 30 days of his order. The justice also ordered the Client to serve his response on A.J.E. at least two days before that hearing, which was scheduled for December 19, 2017. On December 15, when he arrived in a port where he could access email, the Client forwarded documents to Ms. Elischer that A.J.E. had sent him for the application, asking that LK Law review and advise him about them (Corrigan Affidavit, Ex. 32 and 33). On December 15, Ms. Corrigan emailed the Client, confirming that Ms. Thiele said the Client should be represented at the hearing to argue it would be prejudicial if A.J.E. were permitted to file limited transcripts on the appeal and that Mark Szepes, an associate, would attend the hearing for Mr. Winkler because Ms. Thiele was not available. (Corrigan Affidavit, Ex. 35).
- [71] Ms. Corrigan testified that because she was an articulated student at that time, she prepared background information for Mr. Szepes, who appeared at the hearing. The BC Court of Appeal Registrar denied A.J.E.'s request and ordered her to file a full transcript for the appeal by March 2, 2018, and Ms. Corrigan testified that she emailed the Client enclosing the Registrar's decision on December 22. Mr. Winkler testified that he did not take any issue with LK Law's representation of him before the BC Court of Appeal Registrar and that Mr. Szepes' fees for that appearance were reasonable.
- [72] The Client emailed Ms. Corrigan on December 23, asking her to respond to him by January 3, which she testified was during the period when she was away from the office on vacation (Corrigan Affidavit, para. 56 and Ex. 43). Among other things, the Client asked Ms. Corrigan to advise him "where [A.J.E.] is with her appeal. As of today I did not get an answer. I am looking for a short response in plain English ", then he acknowledged that A.J.E. was ordered to file the transcript by March 2, 2018.
- [73] Ms. Corrigan responded to the Client on January 3 in a lengthy email, the contents of which she had discussed with Ms. Thiele (Corrigan Affidavit, Ex. 46). In this email, Ms. Corrigan lays out the procedure for the appeal and the issues that the lawyers were concerned about, advises the Client about the costs hearing (which had been adjourned by consent) and about the Chattels Assessment. The Client responded the next day and again asked LK Law to

monitor his email, as well as asking for a detailed list of the chattels from A.J.E. (Corrigan Affidavit, Ex. 47). Among other things, the Client also asked Ms. Corrigan to confirm that A.J.E. had received the judgment funds and then asked, "with this money can she still collect her disability pension? If not who should I inform? When does [A.J.E.] has to present the bill of costs?" Ms. Corrigan responded in an email the same date, advising that A.J.E. had not provided a bill of costs, reiterating that LK Law cannot agree to monitor his email and suggesting that he not get involved in A.J.E.'s affairs (Corrigan Affidavit, Ex. 48).

- [74] On January 25, 2018, the Client copied Ms. Corrigan and Ms. Elischer on an email to a friend who had agreed to monitor his email (Corrigan Affidavit, Ex. 53). In this email, the Client wrote to the friend, knowing it was copied to the LK Law staff, "if there is an unread email in this [email] account, just forward it to [Ms. Elischer's email] and [Ms. Corrigan's email] saying I forward the email from [A.J.E.] on behalf of [the Client] to you. [The Client] might not had a chance to read this email because he is out of email reach until February 30 [sic], 2018. Please act on behalf of Mr. Winkler".
- [75] A.J.E. eventually provided her bill of costs in January 2018, claiming \$41,250. A.J.E. continued to communicate with Ms. Thiele about the costs and scheduling the hearing before Milman J. The hearing for costs was scheduled for May 29, 2018, but the Client advised that he wanted to represent himself at the costs hearing and asked that it be adjourned.
- [76] In early 2018, A.J.E. contacted Ms. Thiele and Ms. Corrigan, requesting mortgage documents relating to the West 6th Property (which the Client had sold in 2015), asserting that relevant financial information had not been disclosed to her or Milman J. at the trial, which affected the amount awarded to her and she was going to ask Milman J. to reopen the trial.
- [77] On March 21, 2018, Ms. Thiele wrote to update Mr. Winkler about the proceedings with the assistance of Ms. Corrigan (Corrigan Affidavit, Ex. 62). Ms. Thiele discussed her concerns about the possibility of Milman J. reopening the trial to hear further evidence on the valuation of the West 6th Property, as well as the ongoing issue of costs and the Chattel Assessment. She encouraged Mr. Winkler to offer to settle the costs and chattels with A.J.E. for \$35,000. In closing, Ms. Thiele wrote, " I hope that you will fully consider the recommendations made in this letter. While we appreciate that you have various questions and inquiries, you continue to incur legal fees to discuss issues we have discussed previously and request information previously provided "
- [78] Mr. Winkler instructed Ms. Thiele to offer to settle the costs and chattels issues with A.J.E. for \$35,000 and this offer was conveyed to her on April 9, 2018. A.J.E. refused to settle without further financial disclosure.

- [79] By the end of April 2018, Mr. Winkler had agreed to formally represent himself and on April 25, 2018, Mr. Winkler signed a notice of intention to act in person, prepared by LK Law, which was filed on April 26, 2018. LK Law also prepared a letter for Mr. Winkler, which was provided to Scheduling, requesting that the May 29, 2018 hearing before Milman J. be postponed (Corrigan Affidavit, Ex. 75).
- [80] LK Law maintains that the Client continued to retain the Law Firm for the purpose of obtaining and dealing with the financial documents related to the mortgage for the West 6th Property sought by A.J.E. Ms. Corrigan testified that she and the Client attended at the HSBC in April 2018 to review further documents. Her evidence is that she spent several hours at the bank reviewing documents and that the Client stayed for less than an hour before leaving. Mr. Winkler does not deny that he left Ms. Corrigan at the HSBC but asserts that she exaggerated the time she spent there. He also maintains that LK Law should have obtained all the relevant documents from the financial institutions before the trial, and it was the Law Firm's fault that any time was spent after the trial obtaining documents and he should not have to pay for this. Based on the evidence before me of the Client's instructions to LK Law regarding document production, I find Ms. Corrigan's evidence on this issue to be more credible than the Client's.
- [81] On April 30, 2018, A.J.E. filed a notice of application, returnable May 10, seeking orders that Mr. Winkler produce financial records. Neither Mr. Winkler nor counsel from LK Law attended the hearing before Justice Smith on May 10 at which Smith J. ordered Mr. Winkler to provide the financial documents to A.J.E. by May 18, 2018. On May 14, 2018, A.J.E. filed applications in which she sought orders on the basis that Mr. Winkler had not complied with the order of Smith J. or with the July 2017 order of Russel J.
- [82] Ms. Corrigan was called to the bar in May 2018. On June 23, 2018, Mr. Winkler emailed Ms. Corrigan asking her to provide A.J.E. with the financial documents that had been ordered by the court and Ms. Corrigan advised that LK Law was of the view that they had provided all of the financial documents to A.J.E.
- [83] The applications A.J.E. had filed in May were adjourned to September 14, 2018 (when the parties were scheduled to appear before Milman J.). A.J.E. also filed four separate applications on September 4, seeking various orders, including a determination of the costs of the family proceedings before Milman J. and an order that Mr. Winkler pay her compensation for her personal belongings, which she estimated at \$11,000.
- [84] In early September 2018, Mr. Winkler emailed Ms. Corrigan with A.J.E.'s bill of costs as well as documents A.J.E. had served him on the applications asking Ms. Corrigan to review and advise him about them (Corrigan Affidavit, Ex. 93). He advised that he would be in Vancouver and asked to meet with Ms. Corrigan on September 7, the week before the applications were scheduled to be heard. On September 6, Ms. Corrigan emailed Mr. Winkler asking for him to replenish the LK Law retainer and to clarify his instructions (Corrigan Affidavit, Ex. 96). Mr. Winkler responded by email that same day, asking her to

print out the orders A.J.E. had sent him and to "review and advise" and to advise if A.J.E.'s costs are reasonable, to clarify the "agenda" for the September 14 hearing and "any other items you see from the correspondence I sent you" (Corrigan Affidavit, Ex 97).

- [85] Through the latter half of September 2018, Ms. Corrigan continued to respond to emails from Mr. Winkler. She prepared draft responses to the applications A.J.E. had filed for him, and she also prepared and swore an affidavit for him to support his response to A.J.E.'s applications for further disclosure. These documents were included in Ex. #7 before me. Mr. Winkler also asked Ms. Elischer (the paralegal) to "compile a file with all correspondence with [A.J.E.] label them as necessary or unnecessary Please include time spent with her in person or on the phone" (Corrigan Affidavit, Ex. 106).
- [86] A.J.E. and Mr. Winkler appeared before Milman J on September 14, 2018. Milman J. adjourned several of A.J.E.'s applications because of the pending appeal, but he adjourned the costs hearing to be set for one day before him and ordered the Chattels Assessment to be determined by a registrar.
- [87] By late September 2018, Mr. Winkler demanded his file from LK Law. On October 2, 2018, he advised Ms. Milgrom in an email that he had no other option but to have LK Law's bills reviewed by a registrar, after setting out several complaints about the work that LK Law had done for him since April 2018, particularly by Ms. Corrigan in the lead up to the September 14 appearance before Milman J. (Corrigan Affidavit, Ex. 110). Mr. Winkler advised Ms. Thiele on October 5 that he was commencing an LPA review and he filed the initial appointment in this LPA review on October 8, 2018. However, on October 18, Mr. Winkler attended at LK Law asking for their advice regarding a hearing scheduled for October 30 in the BC Court of Appeal chambers, in which A.J.E. sought an extension of timelines related to her appeal, and asking for their assistance preparing an affidavit (Corrigan Affidavit, para. 133, Ex. 112).
- [88] Mr. Winkler obtained his file from LK Law in November 2018.
- [89] In January 2019, Mr. Winkler and A.J.E. agreed to settle the appeal for \$50,000 and Mr. Winkler, who was out of the country, emailed Ms. Thiele and Ms. Corrigan asking for their assistance (to review the settlement agreement and what documents were required) (Corrigan Affidavit, Ex. 115). Ms. Corrigan testified that she spent time communicating with both Mr. Winkler and A.J.E. about the agreement to abandon the appeal, as well as attending at the BC Court of Appeal registry to file the notice of abandonment (which had to be redone) and to provide A.J.E. with the cheque. She testified about how difficult it was to obtain A.J.E.'s agreement to sign the notice of abandonment. Mr. Winkler maintained that he should not have to pay for fees when the lawyers do not know the proper form to file to abandon an appeal.
- [90] Associate Judge Dick, sitting as registrar, heard the Chattels Assessment on February 27, 2019, which was the same day she settled and entered the trial order. Mr. Winkler was ordered to pay \$3,000 to A.J.E. "in full and final settlement of either party's right to claim division of property and in resolution of [A.J.E.'s] notice of application filed September 4,

2018." Mr. Winkler submits that LK Law prepared draft versions of the trial order, but that the one settled by Dick A.J. included the reference to costs (which Milman J. had ordered were to be assessed by a registrar) and the LK Law ones did not, and he should not have to pay anything for this work.

- [91] At the full-day hearing before him on February 28, 2019, Milman J. awarded A.J.E. her costs of the trial, on the scale of ordinary difficulty, but he ordered both parties were to bear their own costs for the post-trial hearings.
- [92] Mr. Winkler retained counsel who appeared for him at the assessment of A.J.E.'s family costs before Registrar Nielsen (as he then was) on September 13, 2019. The costs assessment was continued on November 3, 2020, and that day, Registrar Nielsen allowed A.J.E.'s family costs at \$37,230.
- [93] In May 2021, in subpoena to debtor proceedings initiated by A.J.E., Mr. Winkler was ordered by Registrar Nielsen to pay A.J.E. the amounts owing to her for the family costs in four installments.

The Retainer

- [94] Ms. Thiele testified that she advised Mr. Winkler that it could be very expensive for him to have counsel represent him because A.J.E. was self-represented (which, for example, could increase the number of court applications). She said that she advised him that it was to his advantage to represent himself as much as possible, with LK Law providing him advice and assistance when necessary. Mr. Winkler did not dispute that Ms. Thiele had suggested this.
- [95] The Client does not dispute that he executed the Retainer for the limited purpose of assistance with the upcoming JCC, which is expressly set out as follows:

At this time you have not retained us to represent you generally or in connection with any matter other than that specified above.

We further confirm that our retainer in this matter is limited to attending at the Judicial Case Conference in this matter scheduled in September 2016, and that you will remain acting on your own behalf in the aforementioned matter. In the event you wish to retain us for more comprehensive representation in the future, the terms of this retainer agreement will also govern that retainer. [Emphasis in original]

- [96] The Retainer provides that the fees are "based principally on an hourly rate of charge from time to time", which rates were subject to change on an annual basis with increases occurring in the first quarter of each calendar year. The Retainer indicates that Ms. Thiele's hourly rate was \$475, and that Ms. Drake's hourly rate was \$275. It also indicates that the range for legal assistants was \$110 to \$185 per hour, and associates' hourly rates ranged from \$185 to \$400.

- [97] Under the heading, "Schedule of Billing and Payments", the Retainer required Mr. Winkler to provide an initial retainer of \$2,500 (which he did). With respect to billing, the Retainer states the following: "Our firm shall bill you on an interim monthly basis and upon conclusion of the referenced matter." It provides that unpaid accounts bear interest at the rate of 1.5% per month (19.56% per annum).
- [98] As detailed above, Mr. Winkler indicated in several emails to the LK Law lawyers and Ms. Elischer that he wanted LK Law to assist him and represent him after the JCC to the point when LK Law was formally on record. As detailed above, Mr. Winkler also indicated in several emails after the Trial Reasons were released that he wanted LK Law to assist him, including in emails after he was on record as self-represented in April 2018.
- [99] I am satisfied on the evidence before me that Mr. Winkler's retainer of LK Law extended through January 2019.

The Parties' Positions

- [100] The Law Firm submits that the fees it charged to the Client were necessary and proper to respond to the family proceedings initiated by A.J.E., and were authorized by him. The Law Firm submits that the Client was a difficult client, both because of his lack of availability for long periods of time while he was sailing, but also because of his dismissive approach to the litigation and the steps required under the SCFR.
- [101] As I noted, Mr. Winkler is clearly still aggrieved by the outcome of the family litigation with A.J.E. and his testimony and submissions were consistently critical of Ms. Thiele and her colleagues, but also dismissive of the court system. The majority of Mr. Winkler's objections to the bills under review, which he put to Ms. Thiele and Ms. Corrigan under cross-examination, amount to allegations of solicitor's negligence or breach of professional responsibility.
- [102] In the Winkler Affidavit, he set out his analysis of each of the bills LK Law issued to him, setting out what he considered to be entries of no value or counter-productive to his case. Throughout his written submissions, Mr. Winkler maintains that based on the contents of the Drake Letter, in which Ms. Drake advised him about the fees he could expect to pay for certain steps in the proceedings if he retained LK Law, he should not have to pay more than \$55,000 for the period to the conclusion of the trial and only \$3,000 for the post-trial work. He maintains that the work performed by the Law Firm on his behalf after the trial concluded was not necessary or proper, reiterating that it was of "no benefit" to him, and that it was done without his instructions.

Discussion and Legal Principles

[103] On a review of a lawyer's bills under the LPA, the lawyer bears the onus to prove that the work done and the accounts issued for the work done were necessary and reasonable (see, for example, *Cao v. Tsui & Cao Law Corporation*, 2015 BCSC 2072 at para. 24 [*Cao v. Tsui*]).

[104] Section 71(2) of the LPA provides that the registrar must allow fees, charges and disbursements reasonably necessary and proper to the conduct of the proceeding, or those authorized by the client, whether the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

[105] In the course of this analysis, the registrar must consider all the circumstances, including those enumerated in s. 71(4) of the LPA, which provides:

71 (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

- (a) the complexity, difficulty or novelty of the issues involved,
- (b) the skill, specialized knowledge and responsibility required of the lawyer,
- (c) the lawyer's character and standing in the profession,
- (d) the amount involved,
- (e) the time reasonably spent,
- (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
- (g) the importance of the matter to the client whose bill is being reviewed, and
- (h) the result obtained.

[106] The authorities on LPA reviews hold that at the end of the day, the registrar "should allow a fair fee commensurate with the work performed in the retainer and taking into account all of the circumstances": *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals ref'd 2022 BCSC 329 and 2023 BCCA 123).

[107] A review of a lawyer's bills under the LPA is not an action for solicitor's negligence and the registrar does not have jurisdiction to award damages for negligence. As Associate Judge MacNaughton (as she then was), sitting as registrar, stated in *Owen Bird Law Corporation v. Patterson*, 2014 BCSC 553, at para. 11, the role of the registrar on an assessment is not to determine whether the law firm was negligent, or breached its professional responsibilities, with respect to its representation of the client, but to determine the reasonable necessity and propriety of the steps taken by the law firm on the client's behalf and to assess a fair fee for the value of the legal services received.

[108] As the circumstances set out in s. 71(4) of the LPA must be considered on a review, I will address each of them.

The Complexity, Difficulty or Novelty of the Issues Involved

- [109] The Law Firm submits that the case law on "marriage-like relationships" and unequal division of assets under the FLA was not well-developed when the Client's case was before Milman J. but agrees that the substantive issues were not particularly complex or difficult.
- [110] However, the Law Firm submits that the complexity and difficulty of the family proceedings were increased by the fact that A.J.E. was self-represented and that the Client contributed to the difficulty they faced defending A.J.E.'s claim, particularly with respect to document production.
- [111] Mr. Winkler submits that his family proceeding was not complex, relying on the determination by Milman J. that A.J.E.'s family costs were to be assessed on the basis of "ordinary difficulty."
- [112] In my view, the substantive issues arising in the Client's family proceedings were not particularly complex or difficult. However, where one party represents themselves, particularly in acrimonious family proceedings such as these, it presents increased difficulties to counsel representing the opposing party. I find that A.J.E.'s self-representation created difficulties for the LK Law counsel, including time spent appearing on applications that would not otherwise have been brought if she had been represented.
- [113] Based on the evidence before me, I find that the Client's restricted availability to instruct and communicate with his lawyers because of his sailing, as well as his hostility to the legal process in general, contributed to the difficulty the lawyers faced representing him. For example, before me, he admitted that he did not like to read lengthy emails and would often skim them. I find this approach resulted in multiple email exchanges with counsel that would not have been necessary if he had paid closer attention to the communications from his lawyers.

The Skill, Specialized Knowledge and Responsibility Required of the Lawyer

- [114] Ms. Thiele had primary conduct of this family file. She was called to the bar in 1984 and has been practising family law since 1994 and was a senior member of the bar with 30 years experience when Mr. Winkler retained her. Ms. Corrigan graduated from law school in May 2017 but she had worked as a paralegal and legal assistant for several years prior to attending law school. As an articling student she assisted Ms. Thiele with the trial and post-trial hearings until May 2018 when she was called to the bar.
- [115] In his written submissions, Mr. Winkler stated that he "had great expectations" when he retained Ms. Thiele, but he lost confidence in how she represented him and he listed twenty examples of how Ms. Thiele "failed" him (which I reviewed but will not repeat here).

- [116] Mr. Winkler also submits that Ms. Corrigan was not qualified to represent him and "failed in the simple tasks" such as getting mortgage documents from HSBC that he had listed in the materials his friend provided LK Law in 2016. He also pointed to Ms. Corrigan's appearance for LK Law at the PHC in this proceeding in December 2019 at which Taylor A.J. ordered LK Law to provide Mr. Winkler the pre-bills as an example of her lack of skill.
- [117] I am satisfied that Ms. Thiele had the requisite skill and knowledge to defend the Client's family matter and that it was appropriate that she delegated work to the junior lawyers (Ms. Drake and Mr. Szepes) and to Ms. Corrigan, under her supervision. Ms. Corrigan was an articling student and a newly called lawyer when she was involved with Mr. Winkler's file, and although she had experience as a paralegal, she had limited experience as a responsible lawyer. I have considered Ms. Corrigan's experience when I consider the factor of the time spent.

The Lawyer's Character and Standing in the Profession

- [118] I consider this factor to be neutral as Ms. Thiele has no discipline record with the Law Society of BC and neither does Ms. Corrigan.

The Amount Involved

- [119] In its submissions, the Law Firm reiterated that Ms. Thiele had estimated Mr. Winkler's exposure at approximately \$400,000 at a minimum and had encouraged him to settle with A.J.E. for the \$75,000 she initially offered. In his submissions, Mr. Winkler criticized Ms. Thiele for failing to settle the matter and submitted that the exposure calculated by LK Law was "in poor proportion" to the fees charged (to which he adds the amount he paid A.J.E. to settle her appeal), stating that "several lawyers commented the [LK Law] fee is disproportionate high to the exposure".
- [120] The amount involved under this factor is the amount involved in the proceeding for which the Law Firm was retained. Mr. Winkler was ordered or agreed to pay A.J.E. approximately \$300,000 by the time the family proceedings concluded (made up of the trial judgment, A.J.E.'s trial costs, the value of A.J.E.'s chattels, and the settlement discontinuing the appeal).
- [121] Based on the evidence before me, I am satisfied that the value of A.J.E.'s claim against Mr. Winkler justified the response to it mounted by LK Law.

The Time Reasonably Spent

- [122] In its written submissions, the Law Firm cited *Johns, Southward, Glazier, Walton & Margetts LLP v. Massel*, 2017 BCSC 174, in which Associate Judge Bouck, sitting as registrar, stated the following:

[27] I have already observed that a review is not an accounting-like audit. The time spent by the Law Firm in the retainer is only one factor for the registrar to consider in determining the overall reasonableness of the fees charged. The Law Firm is not expected to justify each time entry in the bill but charges will be disallowed if the lawyer has spent more time on an issue than was reasonably expected by the client or required in the retainer

[Emphasis added by LK Law]

[123] The Law Firm submits that it was Mr. Winkler who caused unnecessary and unreasonable time to be spent on his file and that if he had been cooperative, less time would have been spent, particularly with respect to obtaining relevant documents and financial information.

[124] In his written submissions, referring to the Drake Letter, Mr. Winkler submits that LK Law "stated in their fee quote that the cost for this case including trial is between \$40,000 and \$65,000. I accepted that as time reasonably spent. Any amount above that is unexpected." He then submits that he relied on the estimate in the Drake Letter "and made decision based on the legal fee to be paid." The Law Firm pointed to the evidence of an email Ms. Drake had sent to Mr. Winkler in January 2017 advising that the cost of a five-day trial itself would be \$50,000 (Thiele Affidavit, Ex. 27) and that Mr. Winkler could expect a ten-day trial to be double that.

[125] The evidence before me, particularly the testimony of Ms. Thiele and Mr. Winkler himself, does not satisfy me that Mr. Winkler relied on the Drake Letter as an estimate of the total fees he would pay LK Law for the family proceedings. I find Mr. Winkler's testimony is further undermined by the fact that there was no evidence before me that Mr. Winkler asked for a revised estimate from LK Law once he knew that the length of the trial had been doubled, or in any of his emails to the LK Law lawyers and Ms. Elischer as A.J.E. continued to pursue post-trial applications. I would expect if a client was as concerned about costs as Mr. Winkler asserts, he would have asked how much the activities would cost him in the emails requesting assistance. I find it more likely than not that Mr. Winkler is relying on the Drake Letter in hindsight.

[126] Throughout the LPA review, Mr. Winkler asserted that a lot of the work performed for him was "of no benefit" or unnecessary and in his written submissions, he asks me to reduce the fees by half. Based on the evidence before me, which includes the emails Mr. Winkler sent to LK Law asking for their ongoing advice on various issues, I am satisfied that the steps they took for him were reasonable in the circumstances and, in particular, that through his emails asking the Law Firm to perform ongoing work for him, he authorized the Law Firm's activities. For example, I find it reasonable where A.J.E., who was self-represented, was not providing a draft bill of her costs for review, that the Law Firm would prepare one for the Client to advise him of what he could expect to pay. I do not consider this to be "ridiculous" as Mr. Winkler describe it.

- [127] As I have noted, Ms. Corrigan was called to the bar in May 2018 and LK Law did not bill Mr. Winkler for the time she attended the trial with Ms. Thiele when she was an articled student. Ms. Corrigan testified that as an articling student, she did not go before the BC Court of Appeal Registrar, but assisted Mr. Szepes prepare for the hearing opposing A.J.E.'s request to file limited transcripts, which took place in December 2017. On the associated pre-bill, Ms. Corrigan recorded approximately 10 hours preparing materials and argument for Mr. Szepes to use, and Mr. Szepes recorded approximately three hours preparing and attending at the hearing. The same pre-bill indicates that in January 2018, Ms. Corrigan recorded 10 to 12 hours responding to the Client's emails and researching various issues for him, including around the bill of costs A.J.E. could present. In March and April 2018, prior to her call, Ms. Corrigan recorded time dealing with the HSBC mortgage documents sought by A.J.E., including attending at HSBC to review documents, as well as dealing with A.J.E.'s scheduling of the costs assessment in May 2018, and A.J.E.'s draft bill of costs. LK Law did not discount any of Ms. Corrigan's time on the associated pre-bill.
- [128] In the circumstances, I find it reasonable to reduce some of the time LK Law billed for Ms. Corrigan's work during this period, in recognition of her status as an articling student, resulting in her spending more time on some issues than an experienced family lawyer. Although she was an articling student, Ms. Corrigan was the recipient of the Client's ongoing emails, which as I detailed above, were often demanding and dismissive in tone, and had to pursue issues he repeatedly raised. I would reduce Ms. Corrigan's time billed by \$10,000.
- [129] Ms. Corrigan was called the month after Mr. Winkler began representing himself. I do not fault Ms. Corrigan for continuing to provide legal assistance to Mr. Winkler in response to his emails, despite LK Law no longer being on the record. I find that he was a difficult and demanding client to deal with, particularly by this point in the proceedings and that this is reflected in the language he used in the emails in evidence before me. However, in reviewing the pre-bill for the period of September 2018 (when A.J.E. had filed numerous applications), I find that some of the time recorded by Ms. Corrigan should be reduced as I find it excessive in the circumstances. I would reduce the fees charged for her time by \$5,000.
- [130] In keeping with the authorities, I have not conducted a line-by-line audit of the pre-bills to identify those charges I found to be excessive, but in the circumstances, I find it appropriate to apply a global reduction of \$15,000. To this \$15,000 reduction I would add the double billing of \$708.04 for Ms. Drake's time charged in 2016, which was acknowledged to be an error by LK Law in its written submissions.

Whether the Hourly Rate was Reasonable

- [131] As set out in the Retainer Agreement, in 2016, Ms. Thiele's hourly rate was \$475, and Ms. Drake's hourly rate was \$275. Ms. Elischer, a paralegal, was billed out at \$160 per hour. The prebills attached to the LK Law invoices indicate that in 2017, Ms. Thiele's hourly rate

increased to \$495, Ms. Drake's hourly rate increased to \$300, and Ms. Elischer's hourly rate increased to \$165. Ms. Corrigan's rate as an articling student was \$190 per hour and the associate, Mr. Szepes's hourly rate was \$250. In 2018, the hourly rates were as follows: Ms. Thiele's rate increased to \$525; Ms. Elischer's rate increased to \$175; and Ms. Corrigan's rate increased to \$240 when she was called to the bar.

- [132] In his submissions, Mr. Winkler stated that the rates were set out in the Retainer, but he "wouldn't call them reasonable" without further explanation (other than that he was led to believe that the retainer agreement ended at the end of the trial or if the matter was settled).
- [133] Based on my experience as registrar regularly reviewing lawyer's bills, I find that the hourly rates charged by LK Law for its lawyers and staff were reasonable in the circumstances.

The Importance of the Matter to the Client

- [134] Mr. Winkler does not dispute that the matter was important to him, submitting that the case "was important enough that [he] wanted to be represented by a senior lawyer." Based on the evidence before me, including the Client's own testimony, I find that it was very important to him that his version of events prevailed over A.J.E.'s, which is the reason he instructed his lawyers to maintain that he and A.J.E. were not in a marriage-like relationship with A.J.E.

The Result Obtained

- [135] The Law Firm submits that the judgment of Milman J. was "probably the best possible result that [Ms. Thiele] and Mr. Winkler could have hoped for." The Law Firm submits that the results in the Client's favour are that Milman J. set the date for the valuation of family property at the date of separation, rather than the trial date (the default date under the FLA), Milman J. reapportioned A.J.E.'s share to 20%, and awarded her a lump sum of spousal support (as opposed to an ongoing monthly payment). The Law Firm also submits that Mr. Winkler's payment of \$50,000 to A.J.E. to settle her appeal was a good deal for him, referring to the testimony of Ms. Thiele and Ms. Corrigan and their concerns about the appraisal issue.
- [136] As I noted, Mr. Winkler remains aggrieved by the outcome of his family proceedings involving A.J.E. and continues to blame his lawyers. In his submissions, Mr. Winkler criticizes the outcome of the trial, submitting that Ms. Thiele "did not carry out [his] instruction to make a case that I was not in a marriage like relationship" and that Ms. Thiele's work was "so bad that an appeal was triggered by her action". I disagree with Mr. Winkler that Ms. Thiele failed to follow his instructions to make the case he was not in a marriage-like relationship, which defence Milman J. refers to in the Trial Reasons. I also reject Mr. Winkler's assertion that Ms. Thiele's actions caused A.J.E. to appeal.

[137] Based on the evidence before me, I am satisfied that the Law Firm was able to achieve positive results for Mr. Winkler.

Other considerations

[138] In the written closing submissions, the Law Firm submits that I should consider as an additional factor the nature of the Client, citing *Davis LLP v. Statham*, 2013 BCSC 2035, in which Registrar Sainty found that the client in that case was a difficult client, which contributed to the lawyer's fees. The Law Firm submits that Mr. Winkler was a difficult client, which he denies in his written submissions. He submits that he believes in justice and that he worked with teams supporting each other, which he says is the "direct opposite of what the legal profession is all about." He denies he is litigious.

[139] Ms. Corrigan testified that Mr. Winkler was demanding and rude to her in his communications with her in the fall of 2018, especially relating to the applications that A.J.E. initiated in September 2018 and to the draft bill of costs LK Law prepared for him. I have reproduced some of Mr. Winkler's emails and I reviewed all the ones exhibited to Ms. Corrigan's affidavit. I am satisfied on the evidence before me that Mr. Winkler can be fairly characterized as a difficult client and the evidence establishes he is litigious. I consider this a contributing factor on this LPA review.

Summary

[140] I have detailed above the work performed by the Law Firm, and my consideration of the factors set out under s. 71(4) of the LPA. I have also considered Mr. Winkler's submissions and his objections to the bills.

[141] As noted, I find it appropriate to reduce the fees under review by \$15,708.04.

Disbursements

[142] The Client challenged the disbursements charged by LK Law for photocopying and submitted that I should reduce this amount to \$1,000, following what Registrar Nielsen allowed at the assessment of A.J.E.'s family costs. He also submits that the disbursements for searches of the Land Title office were unnecessary and I should not allow them.

[143] I have reviewed the disbursements claimed in the LK Law pre-bills and bills and I do not reduce them. I find the evidence of the Law Firm that they had to conduct searches for Mr. Winkler's property on public registries while he was sailing as the information was not included in the materials he provided them more credible than his assertion that there was information in the material his friend gave LK Law and the lawyers should have been able to obtain it for him. Mr. Winkler did not dispute LK Law's evidence that there was difficulty getting information from HSBC or that he had complained to HSBC management about the HSBC staff with whom he had communicated to obtain financial information.

- [144] I also accept the Law Firm's evidence that it was necessary to prepare several copies of materials for court proceedings because A.J.E. represented herself, resulting in the fees charged for photocopies. In reviewing the pre-bills, LK Law has applied reductions to the charges for photocopies prior to issuing bills to Mr. Winkler and I would not apply further reductions.
- [145] I allow the disbursements as claimed. Because the Law Firm did not separate the taxes owing on the disbursements from the taxes on the legal fees, this will have to be recalculated.

Costs

- [146] Section 72 of the LPA addresses costs of a review, stipulating that where "1/6th or more of the total amount of the bill is subtracted from it", the lawyer must pay the costs, but if the bill is not reduced by 1/6th or more, the client must pay the costs. Costs of the LPA proceedings are awarded on a party-and-party basis, following the tariff set out in Appendix B of the SCCR and are generally awarded under tariff items 1, 2, 24 and 25.
- [147] I have reduced the LK Law fees by \$15,708.04, which is less than 1/6th of the total amount billed (which I calculate to be approximately \$26,500). Accordingly, under s. 72(1) of the LPA, Mr. Winkler must pay the Law Firm its costs for the LPA review.
- [148] The Law Firm did not provide a bill of costs or estimate its costs for the LPA review in its written submissions. Mr. Winkler did not address costs in his submissions.
- [149] Although I do not doubt that the acrimony between the parties will continue through the assessment of the Law Firm's costs and I am not optimistic they can settle the amount of costs, I do not find it appropriate to summarily determine the costs of the review (as permitted under s. 73(2) of the LPA).
- [150] The Law Firm will have to file an appointment to assess its costs for the LPA review proceedings for the seven days of hearings before me, as well as the PHCs before me and Taylor A.J., and the appearance before Registrar Nielsen. As noted, Cameron A.J. ordered the parties to bear their own costs for the appearance before him. If the estimated costs exceed \$45,000, a PHC is required. Once the Law Firm's costs have been assessed, the Law Firm will then file the certificate of fees, showing the amounts determined on this LPA review.

"Registrar Gaily"

- [1] After the Trial Reasons were released, Mr. Winkler sued the lawyer who had witnessed his signature on the Cohab for professional negligence in Small Claims Court, alleging that she had assured him the Cohab would protect him in a family claim, and that her negligent assurances caused him loss. This action was dismissed.

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- [2] The title of Master was changed to Associate Judge through amendments to the Supreme Court Act, RSBC 1996, c 443 in January 2024. I use Associate Judge in this decision, although the title of the presider was Master at the relevant time.
- [3] Thomas Winkler v. Boughton Law Corporation (4 June 2021), Vancouver 1965420 (B.C.P.C.)
- [4] Boughton Reasons, para. 15.
- [5] Boughton Reasons, para. 33.
- [6] I note that Judge Brownstone made the following remarks about Mr. Winkler's testimony before her: "He frequently answered questions with a question. His answers were at times non-responsive, veering into his comments about the problems with the legal system. He often had to be directed to answer a question" (Boughton Reasons, para. 34).
- [7] In the Boughton Action, the Client testified he was "shocked" that Ms. Thiele did not advance the Cohab as a defence at the trial and that he first learned of it while he was attending the trial. Judge Brownstone found the Client's evidence lacked credibility (para. 35).
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