
CANADA / JUDGMENT

Lunny Atmore LLP v. Ting

2017 BCSC 830

COURT

Supreme Court of British Columbia

DECIDED

23 May 2017

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

2017 BCSC 830 Lunny Atmore LLP v. Ting

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lunny Atmore LLP v. Ting,

2017 BCSC 830

Date: 20170523

Docket: S1510425

Registry: Vancouver

Between:

Lunny Atmore LLP

Solicitor

And

Peter Ting

Client

Before: District Registrar Nielsen

Reasons for Decision

Counsel for Lunny Atmore LLP:

J. Dawson

Appearing on his own behalf:

P. Ting

Place and Date of Hearing:

Vancouver, B.C.

November 19, 2016

January 13, 2017 and

April 28, 2017

Place and Date of Judgment:

Vancouver, B.C.

May 23, 2017

Table of Contents

Introduction. 3

Background. 3

The Retainer. 4

The Bills. 6

Legal Principles. 6

Application of the Factors. 7

- (a) and (b) The complexity difficulty or novelty of the issues involved, and the skill, specialized knowledge and responsibility required of the lawyer 7
- (c) The lawyer's character and standing in the profession. 8
- (d) The amount involved. 8
- (e) The time reasonably spent 9
- (f) Fee rates. 11
- (g) Importance of the matter to the client 12
- (h) The results obtained. 12

Disposition. 12

Introduction

- [1] This is a lawyer initiated review pursuant to the Legal Profession Act, S.B.C. 1998 c. 9 (LPA). The lawyer is seeking the balance of fees and disbursements owed in the amount of \$30,978.23 inclusive of taxes; and, contractual interest in the amount of \$11,325.87. The lawyer also seeks the costs of the proceeding.

Background

- [2] The client is a chiropractor. He had a past disciplinary history with the College of Chiropractors (the College). In the fall of 2014 the client was being investigated as a result of a complaint brought by a patient who alleged the client was unprofessional, rude, and purposely physically injured her when he was providing chiropractic services. During the course of these investigations, the client's former secretary informed the College that the client had bullied and pressured her into making a false statement in response to the patient's complaint.
- [3] Pursuant to a retainer agreement dated October 8, 2014, the client retained the lawyer to act on his behalf with respect to the former secretary's allegations. The retainer was eventually expanded to assist the client with an advertising complaint.
- [4] On January 28, 2015, the College issued a citation and notice of hearing against the client in relation to the patient's complaint. That citation included the allegations of the client's former secretary. The parties entered into a further retainer agreement dated March 11, 2015, wherein the lawyer performed the legal services which are at issue on this review.
- [5] The client had a prior disciplinary record with the College and he was fearful that his registration with the College was at risk of being cancelled. This would effectively end his professional career.
- [6] The client wanted a resolution of the complaints against him without the necessity of a formal hearing. This was the client's goal, as the alternative would risk cancellation of his registration. Based upon prior citations against the client, the College had made it clear that it would seek such an order at an eventual hearing.
- [7] The client instructed the lawyer to research the feasibility of commencing an application for judicial review to quash the hearing and also to commence negotiations with the College with a view to resolving the complaints with a consent resolution.

The Retainer

- [8] The March 11, 2015 retainer agreement outlined the description of services and particulars of the law firm's fees. It reads in part:

1. Description of Services

You have asked us, and we have agreed, to act for you in the matter described below. On 10/03/2015, we spoke/met to discuss the scope of our firm's intended representation. The purpose of this letter is to summarize and confirm the terms of your engagement of us.

You retain us to represent you in connection with a matter involving the College of Chiropractors of B.C. and for any other matters which you may hereafter instruct us to act on your behalf, subject to your approval.

We anticipate that our representation will involve taking the following steps on your behalf:

- (a) applying for an adjournment of the hearing of a Citation currently scheduled for April 21-23, 2015; and
- (b) if an adjournment is granted representing you in respect of the hearing.

We will work with you towards achieving the desired results. However, all legal actions are subject to many possible variables such as the demeanour and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the other side -- all of which affect the decision of a judge or jury. Accordingly we cannot guarantee that your desired result will in fact be achieved. For us to work towards your desired outcome, it will be necessary for you to abide by the terms describe in this letter.

2. Lawyers

Maureen E. Baird will be the principal lawyer on your file. However, we reserve the right to assign whichever lawyers or articling students in our firm are appropriate to perform legal services on your behalf. The lawyers and articling students who perform work on your behalf will be supported by one or more paralegals/legal assistants and we will also charge you fees for all of the time they spend working on your behalf.

3. Fees

Our fee will be based principally on the time spent by us on your behalf. Records of all time will be kept and accounts will then be prepared and sent to you periodically.

Our hourly rates are currently as follows:

Lawyers:

\$225,00 - \$400.00

Legal Assistants:

\$75.00 - \$100.00

Articled Students at Law:

\$125.00

However, our rates may reasonably be adjusted periodically and may increase without prior notice to you.

While we expect that our fee will mainly be calculated on the basis of the time spent on your file and our regular hourly rates, we reserve the right to charge more in appropriate cases, such as pressing circumstances, the requirement for work outside normal business hours, exceptionally successful or efficient representation, or special demands on us.

You will be charged GST and PST on fees and GST disbursements as applicable.

5. Interest

Payment is due on all of our accounts when rendered. If any account is not paid within 30 days, interest will be charged on the outstanding balance at a rate of 18% per annum from the date of the account, until paid.

8. Termination of Legal Services

You have the right to terminate our services to you at any time upon written notice to us.

Subject to our obligations to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons which include, but are not limited to:

- (a) if you fail to cooperate with us in any reasonable request, or to provide that we consider to be reasonable instructions, including instructions with regard to settlement;
- (b) if our continuing to act would be unethical or impractical;
- (c) if there has been a serious loss of confidence between us and you;
- (c) if our retainer has not been paid;
- (d) if you fail to pay our accounts when rendered; or
- (e) if in our sole discretion further pursuit or defence of the matter is not warranted.

If you terminate our services or we withdraw, you are required to pay our fees and expenses up until the time we stopped acting for you.

- [9] As the solicitor client relationship progressed, the scope of the retainer expanded to include legal services surrounding the adjourning of the hearing, obtaining a consent resolution of the complaints, dealing with the hearing proceeding, providing an opinion on the feasibility of a judicial review application and representation in that regard if a decision was made to pursue the judicial review option.

The Bills

- [10] The law firm delivered three bills which were signed by the lawyer and itemize the services provided, together with a detailed description of the various tasks together with the time billed for each. The disbursements incurred were also described in detail. The outstanding balance owed is \$30,978.23. Together with interest calculated in accordance with the retainer agreement, the law firm claims a total of \$42,304.10 (\$30,978.23 for fees and disbursements and \$11,325.87 in interest).

- [11] The lawyer gave evidence describing in detail the work performed by her and the law firm, the time it took in relation to the various tasks performed, and the reasons why the work performed was necessary and proper to the conduct of the proceeding. The lawyer also produced for review the law firms' work product, consisting of the entire legal file.

Legal Principles

[12] The registrar must allow fees, charges and disbursements for those services which were reasonably necessary and proper to the conduct of the proceeding to which they relate. The registrar is to consider all the circumstances essential to fair play and justice and those factors enumerated in section 71(4) of the LPA, see *Singleton Urquhart LLP v. Korkuczanska*, 2016 B.C.S.C. 2053 at para. 72.

[13] Section 71(4) of the LPA provides:

Matters to be considered by the registrar on a review

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.

Application of the Factors

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

[14] The complaints to the College and the related legal issues had a degree of complexity. The area of the law, professional discipline, requires a degree of specialization. The client's ability to practice chiropractic medicine was at stake. The client was fearful that in the event the hearing proceeded, his registration would be cancelled and his reputation ruined.

[15] A junior lawyer, under the supervision of the senior lawyer, researched and produced a detailed memorandum which was to be a roadmap to an eventual judicial review if that option was ultimately pursued.

[16] The research focused on alleged breaches of the rules of natural justice and abuse of process. Prior to undertaking the research, the lawyer advised the client, in writing, that the requested opinion concerning the judicial review option would require investigation and a considerable amount of time. The lawyer properly used a junior to conduct research in order to save the client money.

- [17] The client required a substantial amount of attention during the retainer. He demanded immediate responses to his frequent emails and tended to change his instructions on a regular basis. The lawyer was accommodating and attentive to the client's demands. However, this involved a considerable investment of time on the lawyer's part.
- [18] The client was initially unrealistic in his expectation that a consent resolution could be negotiated without any suspension or fine. The client was also unrealistic in his view that a consent resolution could be achieved with minimal effort.
- [19] The client had a history of prior complaints against him, and the College had made it clear that in event of a hearing, the removal of his registration would be sought. The client, at times, displayed a lack of cooperation and reasonableness. This necessitated time, effort, and disbursements which might otherwise have been avoided.
- [20] The client was desperate to avoid a formal hearing. In my view, his lack of cooperation was motivated, in part, by a desire to buy time so as to put off the hearing. The client eventually advised the lawyer he had lost confidence in her, and dismissed her.
- [21] The client was an experienced litigant who knew that in event he switched lawyers, a potential hearing date could be delayed as a result. Indeed, the client was forthcoming with the fact that he wanted the matter delayed as long as possible.
- (c) The lawyer's character and standing in the profession
- [22] The lawyer is highly experienced in administrative law, having been appointed to a variety of federal and provincial administrative tribunals. She has written numerous articles and is a sessional instructor with the Continuing Legal Education Society in the area of administrative law.
- (d) The amount involved
- [23] The stakes in the litigation were not simply money. The client's professional existence was at stake. If the proceeding resulted in a hearing, the College would be seeking cancellation of the client's registration. Put simply, the client was facing professional capital punishment. The loss of the client's registration was a loss of his livelihood.
- [24] Originally, the College offered a one year suspension and that the client pay \$10,000 in costs. The College was prepared to allow for eight months served if the client fulfilled a number of conditions. However, even if the client did fulfil the conditions proposed, the client would have been barred from practising for four months and his discipline record would show a one year suspension. The significance of the record of a one year suspension is that it can form the basis of an immediate cancellation of his registration in the event the client has the misfortune of finding himself facing any citations in the future. As a result of the lawyer's skill and efforts, she was able to elicit an offer from the College of a four month suspension and \$10,000 in costs. It was the lawyer's opinion that the College would likely accept a three month suspension and \$15,000 in costs. She suggested this as a counter proposal in an email

to the client dated June 16, 2015. Rather than accept the lawyer's advice, the client dismissed her and retained subsequent counsel. Subsequent counsel resolved the matter on the basis of a three month suspension, a \$10,000 penalty, and a further \$10,000 payment in costs. The final resolution was very similar to the counteroffer proposed by the lawyer immediately prior to her dismissal.

(e) The time reasonably spent

- [25] The law firm's bills indicate that the retainer spanned five months. The lawyer billed 52.5 hours and a junior at the law firm billed 62.1 hours, 17.8 of which were written off. The client also received a courtesy discount of \$1,000.
- [26] The bulk of the work billed involved correspondence between the client and the lawyer, correspondence between the lawyer and the College and, substantive legal work in relation to the possible judicial review and the proposed consent resolution.
- [27] The client demanded to be consulted on, and approve all legal correspondence with the College, and any strategic decisions. The lawyer dutifully fulfilled these expectations. This increased the legal costs as did the fact that the client tended to vacillate in his instructions. An example is the client's determination to pursue the judicial review option up until his email of June 3, 2015, where he advised the lawyer "I have decided not to file a judicial review application". Unfortunately, by this time, a significant amount of billable time had been incurred. The work was done on the instructions of the client. The lawyer immediately "downed tools" when the client instructed otherwise in his email of June 3, 2015.
- [28] The client's primary complaint regarding the lawyer's bills centered on the alleged time spent preparing for a possible hearing before the College, and the time spent on research and legal work related to the potential judicial review. The client stresses that he made it clear "that a hearing was not an option" as there was a very real risk that his registration could be cancelled. The client, in his written objection to the lawyer's bill, states in part:

I retained Ms. Baird on or around March 9 where I indicated that the scope of her representation is limited to judicial review and consent resolution and not include preparation for hearing. We had clear understanding that hearing was not an option for me the fact that if we go for hearing we take a very high risk of my registration being cancelled. So my only options would be either negotiating a settlement with the College or to explore the feasibility of judicial review. In contrary to my instructions, she drafted a retainer that limits the scope of her representation to preparation for a hearing only. It had been quite a hassle for me to send emails back and forth and only with great difficulty she had been able to re-draft a retainer that limits her scope of representation to include what I instructed: judicial review and consent resolution. Despite my objections, Ms. Baird kept requesting information/preparing for hearing regardless of her reasons. I always have concerns that she was representing her financial interests rather than my best interests.

- [29] The lawyer testified that she understood and acknowledged the client's instructions for her to manage the complaint so as not to require him to attend a hearing. However, the lawyer explained that as a matter of strategy and procedure, all options needed to be available, if necessary.
- [30] The lawyer was required to continue discussions and negotiations with the College surrounding the hearing in an attempt to adjourn it and as a matter of strategy in negotiating a settlement of the complaint. The lawyer could not simply ignore the issue of a hearing while trying to negotiate a settlement. As the lawyer testified, if the College were aware that the client would not attend a hearing, that would have had an adverse consequence on the potential for settlement on the terms sought by the client.
- [31] The lawyer's billings in this regard were restricted to sparring with the College to keep them at bay long enough to negotiate a settlement. In my view, this strategy was both reasonably necessary and proper to the proceeding, and advanced the interests of the client.
- [32] The client takes issue with the work done by a junior at the law firm which was performed on June 3 and 4, 2015, given his instructions to cease work on the judicial review. However, the work done by the junior addressed issues related to the hearing of the citation and not the judicial review. Unfortunately, the junior's work was misdescribed in the law firm's account which caused some confusion and a misunderstanding on the client's part.
- (f) Fee rates
- [33] The lawyer billed \$400 an hour for her time and the junior lawyer at the law firm billed \$275 per hour. The lawyer was called to the bar in 1984 and has substantial experience in administrative law and disciplinary proceedings. She is a Q.C. and has had an illustrious and accomplished career.
- [34] The client entered into the retainer agreement with the full knowledge of the hourly fees charged by both the lawyer and the junior. Indeed, the lawyer had previously worked for the client.
- [35] The rates charged by the lawyer were consistent with her expertise, years of call, and with other lawyers of similar experience in the Lower Mainland.
- [36] The lawyer made use of juniors where appropriate to keep costs down and wrote off time billed by the junior where appropriate.
- (g) Importance of the matter to the client

- [37] The legal dispute was of the utmost importance to the client. He faced the possibility of having his registration with the College cancelled. This would have had the effect of preventing the client from practicing his profession and earning a living. The lawyer, by the time of her dismissal, had moved the College substantially towards a consent resolution of the complaint which would ultimately prevent the matter from going to a formal hearing. This is precisely what the client sought to achieve from the outset.
- (h) The results obtained
- [38] The lawyer was able to negotiate a four month suspension and \$10,000 in costs prior to her dismissal. It is possible that the lawyer may have been able to improve upon this result if she had the continuing confidence of the client, and been given the opportunity.
- [39] I consider the result obtained by the lawyer to have been exceptional given the circumstances and the fact that the client had a prior disciplinary history with the College.
- [40] The subsequent law firm retained by the client obtained a suspension of three months rather than four, however, the client was forced to pay an extra \$10,000 in costs. The ultimate result was very similar to that negotiated by the lawyer.

Disposition

- [41] In my view, the client received good value and results from the law firm which diligently pursued the client's best interests throughout the retainer. There is no principled basis on which to reduce the amount billed. The lawyers' fees, disbursements, and interest at the contractual rate are allowed in full. As the law firm's bills have not been reduced, pursuant to section 72(1)(b) of the LPA, the law firm is entitled to the costs of the review.
- [42] The law firm compiled the record for the purposes of this review, consisting of three four inch binders. Copies were made for the client, the Court and the witnesses.
- [43] Pursuant to section 73(2)(b) of the LPA, the registrar may summarily assess the costs of the review. The law firm is awarded costs in the amount of \$3,500 all-inclusive.
- [44] A certificate may be submitted through the Registry for signature.

"District Registrar Nielsen"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/08/2017BCSC0830.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lunny-atmore-llp-v-ting-2017-bcsc-830>

Prepared on 29 October 2026 · Esheria