

CANADA / JUDGMENT

McLeod v. Huang

2024 BCSC 1286

COURT

Supreme Court of British Columbia

DECIDED

17 July 2024

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2024 BCSC 1286 McLeod v. Huang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McLeod v. Huang,
2024 BCSC 1286
Date: 20240717
Docket: S230150
Registry: Vancouver
In the Matter of the Legal Profession Act, S.B.C. 1998, c. 9

Between:

Bruce E. McLeod
Lawyer
And
Dongdong Huang
Client

Corrected Reasons for Decision: The text of the reasons for decision was corrected at paragraphs 161 and 212 on July 29, 2024.

Before: Associate Judge Bilawich
(As Registrar)
Reasons for Decision

The Lawyer, appearing in person:

B. E. McLeod

The Client, appearing in person:

D. Huang

Place and Date of Hearing:

Vancouver, B.C.
November 6-7, 2023
March 18-20, 2024

Place and Date of
Judgment:

Vancouver, B.C.

July 17, 2024

Introduction

[1] This is a lawyer-initiated review of accounts that Bruce E. McLeod (the "Lawyer") issued to Dongdong Huang (the "Client"). It is brought pursuant to Part 8 of the Legal Profession Act, S.B.C. 1998, c. 9 (the "LPA"). The relevant legal services relate to hard-fought litigation which culminated in a 27-day trial. The accounts in issue include:

Date

Fees

Disb.

GST

PST

Total

Oct 24, 2016

\$5,000.00

\$34.00

\$250.85

\$350.00

\$5,634.85

Nov 2, 2016

4,350.00

25.00

218.75

304.50

4,898.25

Apr 19, 2017

30,000.00

1,790.70

1,558.27

2,100.00

35,448.97

Jun 20, 2017

30,000.00

544.13

1,525.46

2,100.00

34,169.59

Sep 17, 2017

25,000.00

3,438.80

1,405.86

1,750.00

31,594.66

Oct 31, 2017

1,900.00

876.70

138.84

133.00

3,048.54

Jan 23, 2018

11,500.00

2,269.67
680.98
805.00
15,255.65
Dec 4, 2018
2,240.79
95.50
2,336.29
Jan 29, 2019 *
8,195.27
8,195.27
Feb 1, 2019
8,865.00
443.25
620.55
9,928.80
Apr 12, 2019
22,000.00
15,306.05
1,849.18
1,540.00
40,695.23
May 3, 2019
3,352.50
148.69
3,501.19
Jul 22, 2019
16,054.55
480.59
16,535.14
Aug 16, 2019
40,000.00
2,000.00
2,800.00
44,800.00
Sep 23, 2019
2,107.14
105.35
2,212.49
Nov 28, 2019
17,549.12
296.90
17,846.02
Mar 19, 2020
1,956.31
61.05
2,017.36
Feb 1, 2021
2,500.00
48.25
127.41

175.00
2,850.66
Mar 23, 2021
3,556.35
177.82
248.94
3,983.11
Jun 29, 2021
63.58
3.18
66.76
Dec 7, 2022
350,000.00
2,225.80
17,505.54
24,500.00
392,231.34
Totals
\$534,671.35
\$78,078.36
\$29,073.47
\$37,426.99
\$677,250.17

* Interest Charged

[2] The Lawyer says the Client has paid \$285,018.83. The Client says he has paid \$289,918.14. The difference appears to relate to payment of non-party invoices. I accept the Lawyer's figure. Only the final account, dated December 7, 2022, was not paid. The Lawyer claims the balance owing is \$392,231.34, plus contractual interest thereon.

[3] The December 7, 2022, account encompasses services which were provided between March 15, 2019 and November 2021, with the majority involving preparation for and conduct of the trial, most of which occurred in 2019.

[4] The outcome of the trial was, to use the Lawyer's words, "a profound disappointment". The Client characterizes it as "disastrous, killing and tortuous". The Client's primary claims were dismissed, save for nominal awards against two of the defendants. A counterclaim brought against the Client was dismissed, save for a nominal amount which the Client was required to account for and pay to one of the defendants.

[5] On several occasions while the case was in progress, the Lawyer sent the Client pre-bill reports which detailed the accumulating work-in-progress ("WIP"), but he intentionally chose to delay issuing accounts. He says this was due to the Client's severely strained financial circumstances and limited ability to pay. The Lawyer wished to avoid having to remit PST and GST on any accounts he issued when the Client was not in a position to pay in a timely manner. He did continue working on the Client's case despite there being long periods without significant payment.

[6] The Client raises numerous objections to the Lawyer's accounts.

Background

[7] The Lawyer was called to the BC bar in 1987. Early in his career, he practiced for roughly 5 years with the Vancouver firm Russell & DuMoulin and for roughly 3 years with Nathanson, Schachter & Thompson LLP. In 1994, he started his own practice under the firm name McLeod Ross, with colleague Alan Ross. They shared space but

carried on independent practices. He has continuously practiced civil and civil and commercial litigation since then.

[8] The Client also happens to be a lawyer who practices in both China and BC. At the time of the retainer which is the subject of this review, he was in his early 60's. His education and professional background are summarized by the trial judge in *Huang v. Li*, 2020 BCSC 1727 at paras. 14-18:

[14] Dr. Huang was born in the People's Republic of China in September 1958. After completing high school, he attended Wuhan University from 1978 to 1982, where he excelled academically. Dr. Huang described Wuhan University as one of the oldest universities in China and one of the most prestigious. He also described it as academically selective. According to Dr. Huang, as an undergraduate, he was awarded the "gold prize," only one of which is given at the University in any year. Thus, as Dr. Huang explained, that year he was the winner of the "gold prize" for the entire University. Dr. Huang received his Bachelor of Arts degree in 1982. That same year, he was selected to study abroad and also took the national examination for graduate studies. Dr. Huang enrolled in Wuhan University's Department of Law and received a Bachelor of Laws degree in 1984. In 1982, he began studying English at the Szechwan Foreign Language Institute. When Dr. Huang took the "TOEFL" ("Test of English as a Foreign Language") exam in 1983, he did very well and came at the top of the class, even though, as of that date, he had never lived in an English-speaking country.

[15] In 1984, Dr. Huang moved to Ottawa, Ontario. This was the first time he had been out of China. He attended the University of Ottawa, where he was enrolled as a graduate student in the Faculty of Law. Dr. Huang received his LL.M. degree from the University of Ottawa in 1986. He began working at the law firm now known as Faskens, where he was employed full-time as a legal consultant. In 1988, Dr. Huang worked in Toronto at the Torys law firm, where he was employed as a Chinese law consultant. He was enrolled in both the doctoral program at the Faculty of Law at the University of Ottawa, and the LL.B. program at Osgoode Hall Law School at York University. In 1991, when he received his LL.B., Dr. Huang moved to Vancouver. He articulated with the Guild Yule law firm, before being called to the Bar in B.C. in 1992. That same year, he received his doctorate in Law from the University of Ottawa.

[16] After being called to the Bar, Dr. Huang practiced corporate and commercial law with the Smith Lyons law firm before he started his own practice ("D.D. Huang & Associates") in 1994. Dr. Huang explained that he rejoined Faskens in 1998, where he practiced as associate counsel until 2002. Dr. Huang then joined a public company, Spur Ventures, as a director and vice-president. Dr. Huang explained that Spur was engaged in phosphate mining and fertilizer production and, in addition to his positions at Spur, he was also president of a joint venture that Spur had in China. Dr. Huang explained that he was working as an executive with Spur, and practicing as a lawyer part-time. In addition to Spur, Dr. Huang's resumé lists (under "Business Experience") executive positions (including general counsel) and work at a number of other companies.

[17] As of 2015, Dr. Huang was a partner in the "Times Jusers" law firm, which Dr. Huang described as one of the top ten law firms in Beijing, and which he joined in June 2004. He was continuing to practice law part-time in Vancouver and in Canada through his own firm, D.D. Huang & Associates. Dr. Huang was also an adjunct professor at both Wuhan University and Qingdao University.

[18] Dr. Huang explained that, as a lawyer, he maintained his focus on corporate and commercial law. Part of his practice was working for clients who were engaged in business between Canada and China, and he was serving largely Canadian, United

States and Chinese clients.

[9] The parties first became acquainted in the late 1980s, when they both practiced with Russell & DuMoulin for a period of time. The Lawyer says on several occasions over the years since then, the Client has sought out his advice and assistance with a variety of litigation matters. For example, he assisted the Client with an LPA review of accounts the Client issued to one of his own clients: see *Huang v. Ross Chocolates Ltd.*, 2010 BCSC 1005. The Client also requested assistance when he was being investigated by Canada Customs officials after he was found to be in possession of several passports belonging to other persons while passing through Vancouver International Airport.

[10] On or about September 12, 2016, the Client contacted the Lawyer requesting assistance with issues arising from the breakdown of his relationship with Peipei Li ("Ms. Li"), a company she controlled named LPP Properties Inc. ("LPP") and eventually members of Ms. Li's family, including (without limitation) her brother Daqi Li ("Daqi").

[11] The Client said Ms. Li had misled him with false representations of love and an intention to enter into a long-term spousal relationship. While labouring under this belief, the Client transferred roughly \$1.4 million worth of funds and various assets to Ms. Li, LPP, Daqi and other members of Ms. Li's family in China. The Client had also acted as legal counsel for Ms. Li and LPP. He alleged he had been promised an equity stake in LPP and had provided unpaid services. Their personal and professional relationship came to end after the Client learned Ms. Li was romantically involved with Luhua Rao ("Mr. Rao"), a wealthy Chinese businessman who had had invested roughly \$18 million into LPP. The Client indicated Ms. Li had initially agreed to return his money and assets. She paid him US\$148,000 and returned certain jewelry he had purchased for her. Thereafter the payments ended.

[12] The Client retained the Lawyer to help him to recover the balance of the money and property, the promised equity in LPP and the value of unpaid personal and professional services he had provided to Ms. Li and LPP.

[13] The Lawyer filed a notice of civil claim on the Client's behalf on April 10, 2017 in Vancouver Registry Action S173324, *Huang v. Li and others*. Around the same time, the Lawyer filed an application for a Mareva injunction freezing the assets of Ms. Li and LPP. That application ultimately did not proceed to hearing the merits due to the outcome of a similar application made by Mr. Rao in an action he brought against Ms. Li and LPP in Vancouver Registry Action S1611258.

[14] On May 12, 2017, Ms. Li and LPP filed a counterclaim against the Client, alleging he had breached fiduciary and professional duties owed to them. Daqi retained separate counsel. The parties were all seeking special costs.

[15] The action was hard-fought. The trial was initially set for 10 days but ended up occupying 27 days, including May 6-10, 13-17, August 26-30, September 3-6, 23-27, October 4, November 5, 2019 and February 7, 2020. The trial initially completed on September 27, 2019, but the Lawyer made a post-trial application to amend pleadings to add a claim in conversion against Daqi. The latter three dates relate to the application and reopening of the trial to address the conversion issue.

[16] Justice Adair presided at trial. She issued reasons on November 16, 2020, concluding that:

- a) The Client had failed to prove his claims in fraud against Ms. Li and LPP and failed to prove his claim in mistake of fact against Ms. Li. She did grant the Client judgment for \$2,280 against Ms. Li and for \$2,080 against LLP for unjust enrichment.
- b) The Client's claim against Daqi was dismissed in its entirety.
- c) For Ms. Li's counterclaim for breach of fiduciary duty, she ordered the Client to

account to Ms. Li for certain settlement funds he had acknowledged having received in trust for her while acting as her lawyer, but she dismissed the balance of her claim. She dismissed LPP's counterclaim.

[17] In late January 2021, the parties filed written costs submissions. On February 24, 2021, Justice Adair issued supplementary reasons on costs, indexed as Huang v. Li, 2021 BCSC 280. She ordered that, as amongst the Client, Ms. Li and LPP, they each bear their own costs. The Client was ordered to pay Daqi party and party costs at scale B, and double costs from May 6, 2019, the first day of trial.

Start of Lawyer-Client Relationship

[18] On September 6, 2016, LPP sent the Client a letter terminating their legal relationship.

[19] The parties had meetings on September 12 and 13, 2016. On September 13, 2016, the Lawyer emailed the Client, advising he believed the Client's claim against LPP was particularly strong and he was reviewing the legal basis for his various claims against the personal defendants. Regarding the retainer:

I will draft an engagement letter too. Please take steps to arrange retainer instalment of \$10,000. I agree to charge at reduced rate of \$400 per hour, plus a top-up bonus at the end. We need to discuss this soon, so that we may focus energies on prosecuting your claims.

Let's discuss again this afternoon.

[20] The Lawyer says that on September 14, 2016, he provided a retainer letter addressed to the Client and his law firm:

Dongdong Huang

address

D.D. Huang & Associates

Address

Attention Mr. Dongdong Huang

Dear Sir,

Re: Zoe Peipei Li, LPP Properties Inc. [and others]

I am writing to set out the terms on which I will provide legal services on your behalf.

You have requested my assistance in advancing claims against the above referenced parties. I agree to represent you, and you agree to retain me, on the terms and conditions set out in this letter.

You agree to retain me on a fair fee basis. My fees are set primarily but not exclusively on the basis of my hourly rate multiplied by time worked on your behalf. The amount of my fee will also reflect the complexity of the issues involved, specialized knowledge and skill required, the amount at stake, the importance of the matter to you, urgency, and the results obtained.

My present hourly rate is \$465.00, but I have agreed to act on your behalf for \$400.00 per hour plus a bonus payment to be discussed and quantified at the conclusion of the file. We discussed yesterday but did not agree on a fixed fee or percentage calculation. We have agreed to leave the calculation of the bonus to the end of the file.

In addition to legal fees, I will charge you for disbursements including postage, courier, photocopying (\$0.30 per page), computer research, professional experts, court reporters, registry fees, and any out-of-pocket expenses reasonably incurred and paid by me on your behalf. Legal fees are subject to GST and PST, which will be remitted by me and charged as a disbursement on your account.

I have requested a retainer in the amount of \$25,000. Based on your current circumstances, related to the conduct of Zoe Li and the other defendants, you have

paid in trust the sum of \$5,000. You agree to make additional payments very soon, which we shall discuss as matters progress. All retainer funds will be held by me as security for payment of my accounts and may be applied to any unpaid account. I will bill you monthly or more or less frequently as I deem appropriate. If I apply retainer funds to any account, you agree to replenish the retainer from time to time upon request. If for any reason my accounts exceed the amount of the retainer and such accounts remain unpaid for a period of 30 days, or if you do not replenish the retainer from time to time as requested, I may cease work and, in my sole discretion, formally withdraw as your counsel in any legal proceedings. You agree to pay interest of 2% per month compounded monthly (26.8% per annum) on all unpaid accounts. Lastly, you would be aware that I share office space with three other lawyers: Alan Ross, Rodney Massel and Roland Luo. We have agreed amongst us not to act for any client adverse in interest to the client of any other. In other words, there is no conflict of interest between you and the clients of these other lawyers.

If the above terms are acceptable to you, kindly acknowledge your agreement to retain me on the terms stated in this letter by signing and returning the duplicate to me. If you have any questions or concerns, I ask that you raise them with me now.

[21] The Lawyer testified that it is his invariable practice to require a signed retainer agreement from new clients before starting work on their matters. He recalled having seen the Client sign the retainer letter, but when the Client later (mid 2019) requested a copy of executed retainer letter, neither he nor his legal assistant could locate it. The Client testified that he did not recall having received or signed the retainer letter in or around September 2016 and he would never have agreed to pay 26.8% interest on unpaid accounts, referring to this as "killing interest".

[22] On September 15, 2016, the Client received a letter from Mr. Olthuis of Hunter Litigation Chambers advising he had been retained by Ms. Li. He demanded that the Client cease and desist harassing and making false and defamatory statements about her. On September 16, 2016, the Lawyer provided a preliminary response to Mr. Olthuis.

[23] On October 25, 2016, the Lawyer sent a more detailed response, with the Client's version of events and demanding payment of just under \$1.2 million, representing the net balance of funds transfers, merchandise and expenses the Client alleged he had paid in relation to a property owned by Ms. Li. On November 10, 2016, counsel for Ms. Li rejected that demand. The Client commented to the Lawyer that it looked like they would have to fight it out in court and he said he would send the Lawyer a draft a notice of civil claim upon his return to Vancouver.

[24] On November 25, 2016, the Lawyer sent the Client an email, noting that this was going to be a credibility case and much would turn on the Client's ability to accurately recall specific details of events. He advised the Client to write down with as much detail as possible the history of his relationship with Ms. Li. If the Client recorded his memories now, it would be easier to refresh his recollection if and when the case went to trial. The Client did so.

[25] On January 6, 2017, the Client informed the Lawyer he had been contacted by Mr. Rao, who had retained BC counsel and was commencing an action against Ms. Li for alleged fraud relating to the \$18 million he had invested in LPP. On January 7, 2017, the Client told the Lawyer he wanted to file a notice of civil claim before he left for China on January 24, and stating, "We must act quickly to place CPL on [Ms. Li's] house. Quick is the key." "CPL" refers to a certificate of pending litigation.

[26] On January 20, 2017, the Lawyer sent letters to RBC Dominion Securities Inc. and RBC Wealth Management notifying them of the Client's intended legal action in fraud against Ms. Li, LPP and others. He advised that the Client intended to apply for a

court order to freeze and preserve assets pending resolution of his claims. These letters were sent in the hopes of informally tying up any funds that Ms. Li or LPP had with either of these entities pending a formal Mareva injunction application being heard.

[27] On February 18, 2017, the Lawyer emailed the Client reporting that a prejudgment garnishing order that Mr. Rao had obtained in his action had been set aside. The Lawyer said RBC had confirmed they had temporarily frozen the accounts of Ms. Li and LPP based on the Lawyer's earlier letter. The bank said it would give them until February 22 to file an application for a Mareva injunction. Ms. Li was in the process of purchasing a home in the Shaughnessy neighbourhood of Vancouver, with the transaction scheduled to complete on March 1. The Lawyer testified he had not yet proceeded with a without notice Mareva injunction application, in part because there was evidence from Mr. Rao's action of Ms. Li having assets in the jurisdiction and there was no indication she was actively dissipating them, among other issues.

[28] The Client was pressing the Lawyer to finalize and file a notice of civil claim. The Lawyer said he was working on that and on the asset freeze issues. Drafting the notice of civil claim took longer than initially anticipated. On April 10, 2017, the Lawyer filed the Client's notice of claim.

[29] On April 11, 2017, the Lawyer filed an application for a Mareva injunction against Ms. Li and LPP. The application was initially returnable the following day. Ms. Li filed an application response, opposing the application. By order of Justice Kent made April 12, 2017, the application was adjourned generally.

[30] The Lawyer testified that he had attended to observe a two-day hearing of an application Mr. Rao made in his action, with Justice Kent presiding. The court apparently expressed concern about the competence of Mr. Rao's counsel. Thereafter, the Lawyer introduced Mr. Rao to Murray Clemens, K.C., a senior litigator with Nathanson Schachter & Thompson LLP, who assumed conduct of Mr. Rao's action.

[31] On April 19, 2017, the Lawyer issued an account to the Client for services since his account dated November 2, 2016 and a copy of the pre-bill report. He had recorded fees totalled \$48,420, which he voluntarily reduced to \$30,000. In his testimony he acknowledged that that time spent drafting the notice of civil claim and application were excessive.

[32] On May 19, 2017, Ms. Li and LPP filed an application on short leave, returnable May 23, 2017, seeking an order that the Client deliver all documents relating to his representation of and provision of legal services to them, that he swear an affidavit verifying he had provided all such documents, disclosing what use he had made of them since his services were terminated, who he had disclosed them to, an order enjoining him from disseminating them and an order that the court file be sealed. I will refer to this as the "privileged documents" application.

[33] On May 23, 2017, Justice Schultes granted a temporary sealing order, which was subsequently extended.

[34] On June 20, 2017, the Lawyer sent the Client an account dated June 19, 2017 for services for the period April 19, 2017 to May 17, 2017 (\$5,520), and the balance relating to work on the privileged documents application (\$25,940). He also enclosed a copy of the pre-bill. The Lawyer commented that because Ms. Li and LPP were attacking the Client in his professional capacity, he recommended that the Client claim special costs of the action, and in any event special costs of the privileged documents application.

[35] On September 19, 2017, the Lawyer sent the Client an account for services

rendered from June 16, 2017. He noted the account included charges for his articulated student, Ms. Horricks, billed at a reduced rate:

I have reduced Sophia's regular hourly rate of \$115 to \$100 in proportion to our agreed discounted hourly rate (\$400 and not my regular rate of \$465).

[36] On March 14, 2018, the Lawyer emailed the Client, indicating he was expecting reasons from Justice Schultes on the privileged documents application any day and noting the trial was scheduled to start in 7 months. The Client responded that he was in the process of getting the Lawyer paid soon. On March 27, 2018, the Client stated: I apologize for the delay in response. I have encountered a temporary problem with financing for the lawsuit. I am talking with my ex wife to see if she agrees that we renew our house mortgage and get some cash out from a different bank. In the meantime, if there is anything urgent to be done, please let me know. I assure you that your bill will be paid and we can discuss the options in our next meeting.

[37] On May 16, 2018, the Lawyer emailed the Client confirming the "basic understanding" coming out of their meeting of the previous day. At this point the trial was scheduled for 10 hearing days:

You have requested an estimate of the fees and expenses required to take this proceeding through to the end of trial. I will do that.

You have unresolved financial and other issues with your ex-wife. You are unable to fully fund the litigation going forward. I have an unpaid account with you of approximately \$35,000 going back some months. (There are three unpaid invoices totaling \$34,468.44.)

You are visiting PRC later this month, returning June 15. You should be in a position to pay the unpaid invoices in whole or in large part upon your return. I need to recover payments in full of the past invoices soon. Mid June is acceptable. If you are unable to pay in full we need to have another discussion.

You have asked me to consider taking a form of security to cover future work. You have informed me that you and your ex-wife are registered joint owners of your home in Coquitlam with a probable market value of approximately \$1.7m. The only charge on title is a mortgage to CIBC with current balance of \$488,000. You also claim an interest in the title to real property you transferred to your ex-wife's parents on the eve of your separation. There is, as well, your interest in the proceeds of the litigation with Li.

I will consider your proposal and get back to you with a response before you return to Canada in June. I suspect that a charge on your interest in the matrimonial property might be sufficient to resolve my concerns. I will need to take advice from a real property lawyer to be sure.

If this accords with your understanding too, please confirm. If I missed something let me know.

[38] Included in the email is a summary of the three outstanding invoices. It includes a statement that, "In accordance with the engagement letter of 14 September 2016, interest of 2% per month, compounded monthly (26.8% per annum) will be charged on all unpaid accounts." A table setting out an interest calculation is included. The interest rate of 26.8% is set out in the table.

[39] On August 2, 2018, the Lawyer sent the Client an email advising there would be some delay in the release of reasons regarding the privileged documents. The Lawyer advised that in his view the case was not ready to proceed to trial in October. A delay of trial would allow them to properly prepare. It might also allow the Client to conclude the family litigation with his ex-wife. The Lawyer expressed concern that the family litigation was understandably distracting the Client from the litigation

with Ms. Li.

[40] That same day, the Client responded, stating it was not his intention to delay because he did not want the "fraudster to stay unpunished", however, he understood the need for delay. He was committed to this trial, both in time and in money. He would catch up with payment of the outstanding bills and give the Lawyer sufficient financing for the next round. He expressed appreciation for the Lawyer's efforts, including those of his legal assistant and articulated student.

[41] August 21, 2018, the Lawyer sent the Client an email confirming a discussion they had just had. This included the following regarding outstanding accounts, contractual interest and possible security:

4. You will make payments on the outstanding bill at the rate of \$5000 per month.

[We did not discuss accrued interest on the phone. I will have Mary prepare an interest calculation on the invoices according to the contractual rate and send it to you for your information. Since this is taking me a while to get paid off I will add the interest to the outstanding amount payable.]

5. We discussed mortgage security for payment of future bills. I believe we have the necessary information to prepare the mortgage and will send a proposal for your review.

[42] On August 22, 2018, the Lawyer sent the Client a summary of principal and interest owing on unpaid invoices to August 31, 2018. It included a detailed calculation, a reference to the retainer letter of September 14, 2016 and the contractual interest rate therein. On August 29, 2018, the Lawyer sent a letter to the Client with the same calculation.

[43] On August 30, 2018, the Lawyer sent the Client an email attaching a billing journal report showing invoices rendered to date and a "Litigation Budget" memo dated August 30, 2018.

Litigation Budget - DD Huang re Peipei Li at al

1. Expenses to date (30 August 2018)

Fees \$107,750

Disbs. \$ 8,979

GST \$ 5,779

PST \$ 7,542

PAID: \$100,582

UNPAID: \$ 29,468

TOTAL (excluding interest) \$130,000

2. Breakdown (approximate)

Sept 2016 to April 2017

Initial instructions, demand letter, correspondence with Hunter Litigation, prepare Notice of Civil Claim, and freeze order (Mareva) application, and attend court for hearing (including hearing of Rao applications) \$45,000

April to September 2017

Responding the Li's solicitor-client privilege application, preparing response to counterclaim and a list of documents \$65,000

(The solicitor-client privilege motion alone appears to have cost \$30,000.)

September to December 2017

Examinations for discovery (first stage) of Dr. Huang and Ms. Li \$35,000

Document Production

The first round of document production is complete. Li's production has gaps which we need to pursue. We need to address the "privileged" documents issue which will require specific court application unless Li's lawyers are more accommodating than they have been to date.

We have had no document production from Daqi Li - which may be minor - or from any of the unserved defendants.

Examinations for Discovery

I expect that the expenses for completing document production and examinations for discovery, without serving any of the other defendants, are in the range of \$10,000 - \$20,000.

Pre-Trial Applications

We are already aware of the following additional applications:

1. Privileged solicitor-client documents
2. Cancel CPL
3. Asset Freeze order (if CPL cancelled)
4. Vary or set aside sealing order
5. Withdraw deemed admissions (Notice to Admit)
6. Substitutional Service on Jimmy
7. Service applications re China resident defendants

This list is not exhaustive. The entire solicitor-client privilege application - complete with short notice, contested adjournment, and sealing order complications - was unanticipated. There may be more.

The solicitor-client privilege motion alone appears to have cost \$30,000. This was unduly complicated by Mr. McEwan's apparent sense of urgency and prejudice. Olthuis has handled the CPL application (so far) in a more traditional and measured way.

How Peipei Li's lawyers conduct this case going forward is hard to predict, and can have an enormous impact on costs.

If this were an ordinary case, absent the foregoing complications, if there were five to ten probable interlocutory applications I would expect that the additional costs would be in the range of \$4000 - \$5000 per application. If we double this estimate the anticipated costs of pre-trial applications, without more than we know at present, would be from \$8,000 - \$10,000 per application, for a total of \$40,000 - \$100,000.

Pre-Trial Preparation

In addition to document production and examination for discovery, there will be additional trial preparation.

The legal issues raised in the case are novel and interesting. We need to budget a reasonable allowance for legal research,

We will need to call additional witnesses, for example Mr. Rao and Mrs. Sapphire. There will be others.

There will be additional court steps as well, including possible Case Management Conferences, mandatory Trial Management Conference, Any party can compel mediation by Notice to Mediate. We may want to participate voluntarily in mediation if a reasonable and beneficial settlement might be reached.

I estimate that the other pre-trial preparations may cost an additional \$25,000 - \$30,000.

Trial

The case was set by consent for ten days trial, with only Peipei Li as participating defendant at that time. If a conspiracy case proceeds it may require additional trial days, say, a total of 20 days.

I note that a similar case with David McEwan acting as counsel for the defendant, Norkum v. Fletcher, 2018 BCSC 904 was vigorously disputed, contentious, and required unexpected additional court time for trial. Without any other defendants and no conspiracy claims, the case required 14 days trial.

As a rule of thumb, trial fees excluding taxes and disbursements may be \$4,000 -

\$5,000 per day. In a complicated case with (for example) difficult cross-examination, daily costs run higher. With two lawyers, those costs would be higher still. In addition, for long trials, we will be required to pay court hearing day fees. For a 20 day trial, your expenses would be approximately \$150,000 - \$200,000.

3. Conclusions

If your case continues through the litigation process without settlement through trial I anticipate that further legal expenses (in addition to those billed to date) would be as follows:

Discovery (documents & oral examination)

\$10,000 - \$20,000

Applications

\$40,000 - \$100,000

Other Pre-Trial Preparation

\$25,000 - \$30,000

Trial: \$150,000 - \$200,000

TOTAL

\$225,000 - \$350,000

Note, this is an extremely rough estimate and may or may not correspond to the actual experience of litigation. The case has already demonstrated earmarks of undue complexity and expensive [sic], mainly at the initiative of the defendant. We should use the foregoing budget numbers as reference points against which to measure progress in the litigation. We should then make adjustments to the above benchmarks as the litigation unfolds.

[44] On September 28, 2018, the Lawyer wrote to the Client to confirm their agreement to modify the interest rate charged on unpaid accounts.

I write to confirm our agreement regarding interest rates on my unpaid accounts.

We agreed on September 23, 2018 that I would reduce the contractual rate of interest to 7.5% per annum simple interest on all past unpaid accounts. You have provided me with a check post dated September 29, 2018 for \$5,000.

I have done a calculation of the interest on the outstanding balance owing on my accounts as follows:

Principal owing as at August 31, 2018

\$37,153.28

Interest at 7.5% per annum from September 1 to 29, 2018

\$221.39

\$37,374.67

Less: payment on Sept. 29, 2018

(\$5,000.00)

Balance owing as at Sept. 29, 2018

\$32,374.67

I will keep the 7.5% interest rate on unpaid accounts until further notice. If you fail to pay the monthly instalments or if future bills remain unpaid for a period in excess of 60 days, I reserve the right to reinstate the original contractual rate of interest. I will give you 30 days' notice before the original contractual rate is effective.

[45] On February 1, 2019, the Lawyer issued an account to the Client for services from January 2018 to September 5, 2018. It was paid from funds in trust, save for a small outstanding balance. In an email of the same day, the Lawyer advised the Client as follows:

I have not billed since January 2018 and have accumulated a substantial unbilled WIP. Rather than pay the translator, I will render a small account at this time. I trust

this meets with your approval.

At this point, I am borrowing substantially on my line of credit to keep working on your file. Any contribution from you is much appreciated.

[46] On February 11, 2019, the Lawyer wrote the Client, noting that a \$10,000 cheque the Client had provided had been reversed by the bank and as a result, the Lawyer was overdrawn on his trust account. He asked that the \$10,000 be forwarded urgently. The Client indicated he would provide another cheque for \$10,000 that same day.

[47] On April 9, 2019, the Lawyer wrote to the Client regarding possible settlement and the retainer.

I have been awaiting your payment of \$40,000, the absolute bare minimum amount I require in order to keep working. Today, I note the payment is still not deposited to my business bank account.

Settlement

Yesterday in Chambers on the hearing of Zoe Li's application to extend discovery, Mr. McEwan gave us a clear picture of Zoe Li's trial strategy. They will attack your character, your morals and your professionalism. Mr. McEwan submitted that you sexually harassed Li. We were frequently at the office of LPP intoxicated. You breached your duties as a lawyer by taking advantage of your clients - Mr. McEwan acknowledged that these are serious allegations against you. He admitted that if the allegations fail Li and LPP may be exposed to an award of special costs.

We are 100% diametrically opposed to McEwan and Zoe Li's other lawyers in our perceptions of your case. You and I see Zoe Li as an immoral fraudster, who took advantage of you to enrich herself at your expense. The allegations against you in your capacity as a lawyer are a distraction and an attempt to divert the court's attention from the real facts and equities of the case.

I have every confidence in your case and that the trial judge will believe you, not Peipei Li, but I must repeat what I have said before: There is no greater certainty in litigation than eighty percent (80%) likelihood of success. At trial, the evidence might turn out differently than expected. Apparently credible witnesses may be found not credible by the trial judge. What seems to be questionable or doubtful testimony might be accepted. There is a human factor in any trial that leads to what I called the "judicial perversity" rule. While unlikely, the trial judge might see the case completely differently than the lawyers or anyone else expects. The judge, in the end, is the person empowered in our system of justice to find the facts and render judgment. At the end of the day, subject to possible appeal, it is the trial judge whose perception is authoritative.

The downside risks in your case are compounded by Zoe Li's litigation strategy.

While you and I view her pleadings as far-fetched, scandalous and outrageous, there is nevertheless at least a 20% chance they may succeed. The consequences to you, if she wins, both personally and professionally, will be significant.

You should consider making a settlement offer. If your offer is accepted, you take the uncertainty of resolution by judge out of the equation.

The defendants have only ever offered to settle for \$75,000 payment by you to Zoe Li.

Terms

In sum, the amount of your offer may be calculated as the amount of money you transferred to Li, less the US\$149,000 repayment by bank draft, at 75%-80% to reflect the contingency for success at trial, plus an amount calculated to reflect 80-90% of actual legal expenses to date.

Let me know if you wish us to make these calculations, and proceed to make an offer

to settle.

Retainer

With respect to my fees, disbursements and our retainer agreement, we need to reconsider current arrangements.

You have not retained me on a contingency fee agreement. I need you to pay for services rendered on an ongoing basis. While I am sympathetic to your financial situation and I have continued to work on your file despite non-payment for long periods of time, we are now at the brink of trial. The office here will be working long hours on your behalf through the end of trial.

Like you I run a small law firm. I am unable to sustain the level of work required to run a 10-day trial of this magnitude without getting paid as we go.

I am prepared to consider an agreement for part payment of no less than 50% of actual fees on an ongoing basis +100% of disbursements, but we need to discuss terms of security for payment.

If we make an arrangement for mortgage or other security you should get independent legal advice.

We need to address this matter immediately to ensure that we can focus on winning your case against Li, LPP and Daqi Li and not waste time dealing with payment arrangements.

Conclusion

The issues of settlement prospects and our retainer arrangements are connected. If you cannot afford the cost of this litigation, we should factor this into the terms of the settlement offer. I need to be paid for my services and cannot afford to run this case on the chance of future recovery. If you are not in a position to pay for legal representation and we cannot make alternate arrangements, then we need to account for this in the timing and the sum of your settlement offer.

Given Li's past offers she might not be inclined to accept your reasonable settlement offer. Nevertheless, I recommend that you make an attempt to settle before more expenses are incurred. As we approach trial, legal expenses will increase dramatically.

[underlining added]

[48] The Client did not give the Lawyer instructions regarding a formal offer to settle.

[49] On April 10, 2019, the Client sent the Lawyer a letter on his law firm's letterhead identifying assets which were available to pay his legal fees:

1. 3406 Gislason Avenue, Coquitlam, joint tenant with Zhong Yu Lu (\$1,480,000) minus roughly \$480,000 mortgage;
2. 3129 Jarvis Street, Port Coquitlam, trust claim in family litigation against Hongliang Lu and Xiuqin He (\$980,000)
3. Commercial Unit at Beidaihe, China (roughly \$350,000);
4. Judgement amount from this litigation.

These assets are available for payment to your legal fees.

[50] On April 12, 2019, the Lawyer sent the Client an account for services rendered from September 5 to November 6, 2018, including all disbursements up-to-date. This was paid from \$30,000 which the Client had provided that same day.

[51] On April 24, 2019, the Lawyer sent the Client an email advising that the level of document preparation for trial had been significant and would continue to be so. He asked his legal assistant to do the work. She was an independent contractor and billed him separately for her services. Since much of her trial preparation (joint book of documents, trial record, etc.) was for the benefit of the court and the opposing parties, unlike her usual administrative, paralegal and secretarial work, he

proposed to amend the retainer agreement to permit him to pass her invoices for trial preparation directly to the Client. The Client agreed to this.

[52] At the time, the Client was also involved in family litigation with his ex-wife. On April 24, 2019, her counsel wrote to the Lawyer seeking agreement that any settlement or judgment achieved in the Li and LPP litigation be held in trust pending agreement of the Client and his ex-wife. The Client was represented by Zukerman Law Group in the family action at the time. The Client eventually agreed.

[53] On May 7, 2019, the Lawyer emailed the Client to pass along a settlement offer from Daqi, in the sum of \$25,000. The Lawyer recommended that the Client not accept it and suggested a counteroffer:

You should consider counteroffering in an amount discounted from your full claim. As I have said before, the best possible case is only 80%. Settlement for 80% of \$80,000 is \$66,000. He might be prepared to pay something closer to \$50,000. This is not the best possible case. Fraud is difficult to prove. The evidence against Daqi Li is strongest on unjust enrichment.

[54] The trial began on May 6, 2019 and continued for the 10 originally scheduled days. Additional days were added in August and September 2019.

[55] On July 8, 2019, the Lawyer emailed the Client regarding the status of accounts and retainer arrangements, and enclosing a copy of the pre-bill WIP report showing unbilled time and disbursements to July 8, 2019:

When we spoke at the end of June you said that you would find \$50,000 to send me some time last week, while continuing to work on funding for the approximately \$200k - \$300k of my incurred costs.

I enclose for your information my work-in-progress report for unbilled time and disbursements to July 8th.

Please note the following:

1. I am charging you a discounted hourly rate of \$400.
2. My regular hourly rate is \$500.
4. I am charging you for Sophia's time at a discounted hourly rate of \$100.
5. Sophia's regular hourly rate is \$250.
6. You have not been billed for work performed since the end of October 2018. Since October there have been multiple examinations for discovery, various court applications and conferences, massive trial preparation plus two weeks of trial.
7. In addition to the disbursements paid and itemized on p. 14 of the WIP report I must now pay the Registry for hearing day fees in the amount of \$3500 (invoice attached).
9. You can take as the total for which you are now responsible to pay is the amount indicated at the bottom of p. 14 of the WIP report, or \$261,276.92.
10. This WIP report is a draft but any corrections for typos etc. will not change the substance of the invoice to be rendered.

Dongdong, this is past the point of crisis. I need to be working on preparation for the continuation of trial starting August 26th. I am running out of time. I cannot continue to prosecute your case without payment within the next two weeks (by August 22) of the amount indicated, rounded \$260,000.

Many lawyers by this point would require payment for past work plus a substantial retainer to cover the upcoming additional 2-3 weeks of trial. While I would welcome that arrangement I am demanding only that you bring us up to date.

If this is impossible then we should start discussing transition immediately.

[56] The prebill report showed time entries from November 2018 due to June 13, 2019. Total fees recorded were \$205,908.50. Disbursements were a further \$12,551.30. The total unbilled amount was \$243,650.51. It also showed that the outstanding

balance owing on issued accounts was \$17,626.41.

[57] On July 19, 2019, the Client sent the Lawyer a bank draft for \$20,000. The Lawyer issued a new disbursements-only account for the period April 24, 2019 to that date. After applying the payment, there was a balance owing of \$10,660.36.

[58] On August 1, 2019, the Lawyer wrote to the Client summarizing discussions they had that day. He had held off billing in full for legal fees and disbursements based on what he knew of the Client's financial circumstances. He was prepared to continue to hold back on billings, but he could not continue working on the case and would withdraw as counsel unless he received minimum payments, which included \$55,000 on or before August 12, 2019 and \$25,000 on or before August 23, 2019. Further, he asked that on or before August 15, 2019, the Client provide him a registrable mortgage on his half interest in the Client's former family home, in an amount sufficient to cover additional expected fees, disbursements and taxes through to the end of trial. He warned that if the Client could not find the necessary funds and the case did not settle, the Client would need to carry on with the case alone or with alternate lawyers who may be prepared to work on a contingency. He noted the Client had indicated he did not have a copy of the original retainer letter. The Lawyer could not locate a signed copy. He reproduced some of the provisions from the draft retainer letter on his file.

[59] On August 12, 2019, the Client emailed the Lawyer to report on his fundraising efforts of the previous ten days. He anticipated receipt of proceeds from his last RRSP (\$25,000), he was arranging for the sale of certain stock, he was booking an appointment for an LPA review regarding \$40,000 in legal fees owed to him by one of his own clients and he had \$10,000, which he could send.

[60] The Lawyer responded, noting this was much less than the \$55,000 he had requested. He understood the Client was in a tight position and would prepare a mortgage to secure payment of his fees and expenses. The proposed minimal payments were barely enough to pay disbursements. He noted that he had not been able to locate the signed retainer letter and that his legal assistant recalled the Client signing it in their office, but it appeared it had been misfiled. He asked that the Client check his own records for a signed copy.

[61] On August 16, 2019, the Lawyer wrote the Client acknowledging receipt of \$35,000 and enclosing an account for services for the period November 1, 2018 to February 28, 2019, in the amount of \$44,800.

[62] On September 2, 2019, the Lawyer emailed the Client, noting he had received emails from his bank manager advising that his operating line of credit was at its limit and in acute need of funds. He confirmed receipt of the \$55,000 requested previously and asked that the additional \$25,000 be paid that week. He sent a follow-up on September 9, 2019.

[63] On September 17, 2019, the Lawyer sent the Client a letter enclosing a copy of (a) the September 14, 2016 retainer letter for execution, (b) a Security Agreement, (c) a Mortgage to be registered against the Client's interest in his former family home, (d) an Acknowledgement of Receipt of Prescribed Standard Mortgage Terms, (e) a certificate of independent legal advice and (d) a pre-bill WIP report dated September 17, 2019. The Lawyer recommended that the Client obtain independent legal advice before executing them. The Client testified this was the first time he had seen the retainer letter.

[64] The recitals in the Security Agreement include the following:

B. The Lawyer was paid for some of his initial services, and from time to time has received some payments for services during the course of his retainer. However, the majority of the Lawyer's services have not been billed to the Client or paid for.

C. The Lawyer has not billed the Client for the majority of the services because the Client has not had the financial means to pay.

D. As at the date set out above, the Client is responsible to the Lawyer for unbilled legal fees and taxes incurred in the amount of \$325,000 (the "Outstanding Amount") in connection with the action. In addition, the Client will be incurring further legal fees, taxes and disbursements in the estimated approximate amount of \$75,000 for the continuation of the trial of the action (the "Additional Legal Costs").

E. The Client holds title to the one-half interest in 3406 Gislason Avenue, Coquitlam, British Columbia (the "Property").

F. The parties have agreed that the Outstanding Amount and the Additional Legal Costs in the amount of \$450,000.00 (the Mortgage Amount") will be secured by a mortgage (the "Mortgage") to be registered against the Property.

[65] The Security Agreement attaches the Mortgage as Schedule "A". Clause 3 provides that the terms of the "Arrangement" will be on demand, subject to clause 4. It also provided that the Lawyer agreed to not make a demand for 6 months after a specified date, provided that the Client was complying with his obligations under clause 4, after which the Lawyer could make demand at any time.

[66] Clause 4 provided that the Client agrees to pay the Mortgage Amount with interest thereon at 8% per annum, calculated and compounded semi-annually, not in advance. It also provided that the Client would make minimum payments of \$5,000 per month commencing October 1, 2019. The latter portion of this clause was later deleted.

[67] Clause 10 provides that the Security Agreement, Mortgage and prescribed standard mortgage terms contain the entire agreement between the parties and that no modification may be made unless done in writing and signed by both parties.

[68] The Mortgage provides that the principal amount was \$450,000, interest was 8% per annum compounded semi-annually and payment dates were "on demand".

[69] The pre-bill WIP report dated September 17, 2019 had time entries for services provided between March 1, 2019 and September 16, 2019. Total unbilled fees were \$261,980.50. The total of unbilled fees, disbursements and projected taxes at the time was \$294,255.22. Outstanding arrears on issued accounts were \$21,428.99.

[70] I pause to note that the WIP amount could actually be considered due and owing under the Security Agreement and Mortgage until the Lawyer actually issued an account for that amount to the Client. He had not done so at this point in time. The Lawyer sought to address this by getting the Client to acknowledge that he was "responsible" to the Lawyer for the unbilled WIP amount. Nothing in the Security Agreement or Mortgage purported to deprive the Client of his statutory right to review any accounts that the Lawyer had issued or may in future issue.

[71] On September 20, 2019, the Client attended at the Lawyer's office and executed:

a) The retainer letter, back-dating his signature as September 14, 2016. It was amended to cross out the sentence "You agree to pay interest of 2% per month compounded monthly (26.8% per annum) on all unpaid accounts". Handwritten in the right margin was added, "Modified by agreement". The Lawyer and Client both initialed this area twice: presumably once for the deletion and once for the addition.

[I pause to note that the Client testified that the words in the margin were not present when he signed the retainer letter, implying the Lawyer had unilaterally added them afterwards. The Lawyer denied adding after the Client signed and says they were present when the Client signed. The presence of two sets of initials and their location above and below the added words supports the Lawyer's evidence that the words were present when the Client executed the retainer letter. I prefer the Lawyer's evidence on this issue.]

b) The Security Agreement. The Lawyer's legal assistant signed as witness. Clause 4 was modified by hand from its original form by crossing out the second half of the clause, with this change initialed by both parties. As modified, it provides:

4. The Client agrees to pay the Mortgage Amount together with interest thereon at 8% per annum calculated and compounded semi-annually, not in advance. The Client shall make consecutive monthly payments in the amount of at least \$5,000 each on the 1st day of each and every month commencing October 9, 2021 and continuing monthly thereafter until the Mortgage Amount and Interest are repaid in full, or, the Lawyer in his sole discretion decides to call for payment of all the Client's indebtedness to be paid in full.

c) The Form B Mortgage. The Lawyer's colleague Mr. Ross witnessed its execution.

d) The Acknowledgement of Receipt of Prescribed Standard Mortgage Terms form.

[72] One of the issues the Client raised is that he did not receive independent legal advice ("ILA") prior to executing these documents. He also alleged the Lawyer had not recommended he obtain ILA. The latter point is clearly wrong. In the Lawyer's cover letter of September 17, 2019, he expressly recommended the Client obtain ILA. The Lawyer had also mentioned ILA in earlier communications pertaining to possible security. In any event, as a practicing lawyer, the Client ought to have been alive to the need for ILA if he felt he did not adequately understand what he was being asked to sign.

[73] On September 24, 2019, the Lawyer submitted the executed Mortgage to the Land Title Office for registration and received a provisional registration number, CA7763891. Notice of this was sent to the Client. The Lawyer later received a "Notice Declining to Register" from the Land Title Office, indicating registration had been rejected on the basis that:

a) A joint tenant borrower cannot mortgage its sole interest in land, meaning the joint tenancy with the ex-wife had to be severed before the Mortgage could be registered; and

b) The title was subject to a CPL which had previously been registered by the ex-wife in their family action.

[74] The Lawyer says he subsequently asked the Client to cooperate with efforts to sever the joint tenancy, but the Client declined to do so. The Client testified he was not aware that registration of the Mortgage had been rejected until more than two years later. Until then, he believed the Mortgage had been successfully registered. I prefer the Lawyer's evidence that he informed the Client that the Mortgage had not been registered. This is addressed in a letter the Lawyer sent the Client on November 5, 2019. It appears, however, that it was not an option for the Client to sever the joint tenancy absent him reaching some form of accommodation with his ex-wife.

[75] On November 5, 2019, the Lawyer sent the Client a letter addressing various issues. This included confirming the Client had not retained him to assist with his matrimonial litigation:

Until our telephone conversation October 24th we were proceeding on the understanding that you would retain me as legal counsel in the litigation with your ex-wife and her parents. You informed me on October 24 that you cannot afford more legal expenses after the fraud trial with Peipei Li.

I understand your reasons for this. The trial expanded to five weeks from the original estimate of 10 days. The case was vigorously defended. Li has substantial financial resources for legal expenses. She has been funding five lawyers: Olthuis, McEwen, Bjornson, Underhill and Wu.

I wish that I could assist you pro bono but the fraud case has been financially onerous for me.

I am prepared to provide some free advice on a limited basis. Before you swear any affidavits or attend discovery I recommend that you contact me to discuss. If the case proceeds to discovery or trial I urge you to consider retaining me as counsel. I am confident that I could assist you in obtaining a better outcome than if you proceed without counsel. I believe that your bargaining power would be greater if you retained me to assist in that proceeding.

Before long I hope we are able to come to terms with respect to legal representation in your family law matter.

[76] With regard to the Mortgage:

We have been unable to register the mortgage you gave me to secure legal costs. Title to your property is joint with your ex-wife. Until you sever the joint tenancy and create tenancy in common the mortgage cannot be registered.

You indicated that this would require complicated and expensive paperwork. It is in fact a simple application that is e-filed with Land Title Office. Ms. Lu however also has registered a CPL which would need to be lifted to permit registration of the mortgage.

For now I will not take steps to register the mortgage. You should consider severing the joint tenancy.

[77] With regard to the likelihood of success in the trial and a comment made by Ms. Horricks at its initial conclusion date that she believed the chance of success was 50-50:

In our telephone conversation you mentioned your distress at Sophie's statement, made as we returned from court on the last day of trial, that she estimated your chance of success at 50/50. I too was surprised by Sophie's comments. I recall that both of us estimated your chance of success after the evidence had been completed at 2/3-1/3, just the week before when you met with us in our boardroom.

As I mentioned on the phone, Sophie has been concerned for a long time about the photographs of Peipei Li with an engagement ring at the sushi restaurant, plus the ambiguous discussions you overheard in Wuhan about pregnancy and abortion.

Sophie has been away on a long trip and has now returned. I asked Sophie earlier this week about her comment. She informed me that she changed her estimate to "50/50" because of Madam Justice Adair's comments about some of the things you had done which suggested to the court that you are not in your right mind. Sophie was concerned that these isolated comments could indicate that Madam Justice Adair was perhaps going to find all of your evidence to be lacking in credibility.

In the telephone call October 24th you said that I have always estimated your chances of success at 80%. I have never estimated your chance of success at 80%. It is my invariable practice to tell clients, as I told you, that 80% is the greatest likelihood of success in court with the best of all possible cases. Your case has never been 80%. Your chances of success in my view have always been very strong. I remain of the view that your chance of success at this point, after taking into account the judge's comments about credibility at trial, remain at approximately 65%, or two out of three.

After I told Sophie of our success on this morning's application she volunteered that this decision causes her to revise her estimate of success back up to "two-thirds".

[78] Post-trial, the Lawyer applied to further amend the notice of civil claim to add an additional claim in conversion against Daqi. This eventually resulted in the trial being re-opened to address that issue.

[79] The Lawyer pleaded with the Client to provide funds to cover roughly \$16,000 in urgent overdue disbursements. He had received demand letters from Court Services requesting immediate payment of outstanding hearing day fees (\$11,200), which he

said he was unable to pay without funds from the Client.

[80] On November 21, 2019, Ms. Horricks sent the Client an email advising she would no longer be practising at the Lawyer's firm. She thanked the Client for the opportunity to work on his case. In the Client's response, he offered the following comment regarding Ms. Horricks' work on his file:

You have demonstrated an amazing ability of grasp of complex web of facts and a penetrating mind into the rules of law, as well as responsive and comforting personal zeal and feeling with your client (friend).

[81] On November 28, 2019, the Client informed the Lawyer he was having great difficulty arranging funds and apologized for this. In the Lawyer's response, he purported to invoke his right to return to the original contractual rate of interest: Since you cannot fund these disbursements I am borrowing on my operating line of credit and paying the account today. I have added them to the statement of account for disbursements only. I will charge interest on the unpaid account in accordance with our 28 September 2018 agreement (copy attached): 7.5% simple interest and after 60 days at 2% per month compounded monthly. Please consider this email notice that I will reinstate the original contractual rate of interest after 60 days, that is, commencing 28 January 2020.

[82] That same day, the Client responded:

I appreciate what you have done for me.

I have a fear to speak with you about legal fees. As you know 2% per month interest will be killing me. I have just borrowed money to pay the law society due yesterday. The conversion argument proceeding is unexpected. I do not want to spend too much legal fee on this. Also, my fee payment is not comparable with that of Li because she has hired so many lawyers and she has big pocket from Rao, me and her house. The mortgage package is a waste of time and money because without solution with my ex-wife, I cannot place anything on title. Last year, the translation fee was unreasonably high and I did not know that my extra payment was going to the translator's account. Nowadays, everyone uses computer APPs to do translation. Please do not spend too much time on the security and communication with me on the fees. I absolutely cannot afford.

[83] On May 20, 2020, the Lawyer emailed the Client an interest calculation on the unpaid accounts. He again said he was reinstating the original contractual rate of interest:

I write with reference to my four unpaid accounts totaling \$22,536.23. In accordance with our agreement confirmed in my letter of 28 September 2018 (copy attached) simple interest at 7.5% will be charged on unpaid accounts. These accounts have been paid for in excess of 60 days.

Starting June 20, 2020, I will charge interest on any outstanding amounts at the original contractual rate of interest, that is 2% per month compounded monthly (26.8% per annum) in accordance with the terms of the September 2018 agreement. This rate will apply to any and all invoices rendered following June 20, 2020.

[84] On September 1, 2020, the Lawyer sent the Client an email noting it had been three months since they had sent the reminder of May 20, that there had been no payment from the Client, and providing an updated interest calculation based on the 26.8% per annum rate of interest. The Client responded:

I will try to send you a cheque of \$5,000 this week. But please please do not charge the 26.8% killing interest.

[85] In anticipation of the impending receipt of Justice Adair's trial reasons, the Client drafted a statement which he intended to release in anticipation of a successful result. The statement included the following:

in this long and hard-fought lawsuit, Bruce McLeod, my counsel, has demonstrated not only the most distinguished professional advice and skills, but also the moral and compassionate feeling towards Dr. Huang. Sophia Horricks, the associate lawyer to Bruce McLeod, has given me the truest professional support I have ever seen. Mary Ho, the secretary to Bruce McLeod, has provided unprecedented help in this whole process.

[86] On November 16, 2020, Justice Adair released her reasons for judgment.

[87] On November 29, 2020, the Lawyer wrote the Client:

JUDGMENT

Madam Justice Adair's decision is a profound disappointment. The judge found you not credible or reliable as a witness. Justice Adair made numerous findings of fact inconsistent with your evidence. She found the testimony of Peipei Li and Daqi Li troubling and inconsistent, too, but where it differed from your evidence, she prepared theirs.

The judge's findings on credibility made the case unwinnable. This case is and has always been a test of credibility. Your testimony and Peipei Li's testimony are in many respects mutually exclusive. Sadly, the judge found against you.

APPEAL

I have considered and reconsidered my initial advice that an appeal is almost certainly doomed to fail. I see little hope in taking an appeal.

[88] The Lawyer noted that costs still had to be addressed. Ms. Li and LPP had made a formal offer to settle which exceeded Client's recovery and they had successfully resisted his allegations of fraud. He expected them to seek an award of special costs. Daqi was separately represented, he had beaten his formal offer and was seeking costs as well. The Lawyer suggested it would be appropriate for him to assist with resolving the costs claims due to his familiarity with the case and his experience litigating costs. He was not prepared to continue to work without payment in trust of sufficient funds to cover the work required to deal with costs, which he initially estimated at \$10,000. He also required payment of the balance owing on his disbursement account, which was \$7,500 at the time. The Lawyer suggested the Client consider bankruptcy.

[89] The Lawyer subsequently agreed to reduce his fee to prepare the costs submissions to \$2,500, and continued to require that the \$7,500 owing on his recent disbursements-only account be paid.

[90] December 7, 2020, the Lawyer wrote to the Client confirming a discussion they had just had. He would prepare costs submissions. The Client would pay him \$5,000 before Christmas and a further \$5,000 on or before January 31, 2021. He would not advise or represent the Client in respect of any appeal. He agreed to give the Client access to his file so the Client could prepare his appeal, but rejected the request that he release his complete file to the Client or

waive his right to a solicitor's lien, if they were not able to agree to a fair fee for the services performed.

[91] On January 22, 2021, the Lawyer submitted the Client's written costs submissions. On February 1, 2021, the Lawyer sent the Client an account for services relating to the costs submissions only, at the agreed fee of \$2,500 plus applicable taxes and disbursements. The Client paid \$10,000, which was applied to the balance owing on the disbursement only account and the costs submissions account, leaving \$386.89 still owing.

[92] On February 24, 2021, Justice Adair released her supplemental reasons on costs. That same day, the Lawyer received \$4,370 from counsel for Ms. Li and LPP, in satisfaction of the amounts they were ordered to pay the Client in the trial judgment.

[93] On March 22, 2021, the Lawyer sent the Client an email regarding the funds he was holding in trust:

I have in trust approximately \$4000 received from Mr. Olthuis. I will send an invoice for a fraction of my remaining unbilled time from trial calculated in the approximate total amount of \$4000. I will not at this time be rendering a full account because I do not wish to incur a substantial immediate PST and GST liability by billing you in amounts that you have indicated you are in no position to pay.

I trust this meets with your approval.

[94] Around this time, the Lawyer assisted the Client with preparing a response to correspondence the Client had received from the Law Society of BC regarding a complaint made by Ms. Li and LPP. The Lawyer agreed provide this assistance on a pro bono basis.

[95] On May 10, 2021, the Lawyer's assistant sent the Client an email confirming the Lawyer was no longer acting for the Client in what remained of the Li / LPP action. She enclosed a notice of intention to act in person for the Client's signature. The Client responded that he was preparing his reply to Daqi's costs assessment and requested the Lawyer's file, electronically and in paper. He said he had already told Daqi's counsel that he was acting in person.

[96] On May 12, 2021, the Lawyer wrote to the Client advising that Daqi's lawyer would continue to include him on correspondence while he remained solicitor of record. If the Client filed and served the notice of intent to act in person, that would stop. The Lawyer also said he would not release his entire file and asked what the Client needed for purposes of his appeal.

[97] On June 14, 2021, the Lawyer sent the Client a letter enclosing copies of the executed amended retainer letter, Security Agreement, Mortgage and a pre-bill WIP report dated June 11, 2021. The letter included:

The pre-bill report covers unbilled time from 15 March 2019 to 3 March 2021. Unbilled time before taxes is 891.33 hours, with a dollar value of \$356,777.50. The pre-bill report excludes services provided to make costs submissions to Madam Justice Adair, for which I separately billed at a fixed fee, plus the pro-bono assistance I gave you in drafting and revising your response to the Law Society's inquiries.

I would be prepared to discount the bill in exchange for prompt payment. If you need time, I would be prepared to enter into an agreement for a schedule of payments.

[98] The cover email noted that the Lawyer continued to receive correspondence from Daqi's lawyer. He asked that the Client sign and return the notice of intention to act in person. The Client responded that he needed to speak with the Lawyer before he did anything further.

[99] On June 17, 2021, the Client emailed the Lawyer the signed notice of intention to act in person.

[100] On March 24, 2022, the Lawyer wrote to the Client to inquire whether his financial circumstances had improved:

I am writing to ask if your financial circumstances have improved and whether you are now in a position to pay a fair fee for my legal services.

I have left outstanding as long as I reasonably can the issue of my unbilled time and the mortgage security you gave me mid-trial to secure payment of my accounts. We now need to come to terms and arrange for payment of a fair fee, hopefully by agreement.

[101] On December 7, 2022, the Lawyer sent the Client his final account. In the cover letter, he said he had not billed the file for a considerable time to give the Client an opportunity to put his finances in order, or to make a proposal to pay over time. He invited the Client to contact him if he wished to discuss payment arrangements.

[102] That same day, the Client emailed the Lawyer requesting all the invoices and all accounting records relating to the accounts. The Lawyer responded, noting the Client already had all of the invoices, as these had previously been emailed, but as a courtesy, he would re-send them. He asked what specifically the Client was seeking under the request for "accounting records".

[103] On December 12, 2022, Ms. Ho emailed the Client a scanned copy of all of the invoices the Lawyer had issued to the Client. The Client responded with a request for the "billing hours table, detailed work description, trust journal and other related information".

[104] On December 19, 2022, the Lawyer's assistant emailed the Client a zip file containing 13 pre-bills, billing journal with notes attached and client ledger for the period September 12, 2016 to December 7, 2022.

[105] On December 24, 2022, the Client emailed the Lawyer as follows:

Merry Christmas to you.

I do not agree with your statement that your [sic] did not send the bill to me because you wanted to give me opportunity to organize my finance.

The disastrous result and many mistakes and errors in the litigation process have tortured me for several years.

[106] On January 3, 2023, the Lawyer responded:

Happy New Year.

Your December 24 email disputes whether I have been waiting for you to put your finances in order. Dongdong, I have been waiting for you to put your finances in order from almost the outset of the litigation to today. Based on your representations of financial difficulties, I (1) reduced my hourly rate, (2) provided some free and some highly discounted legal services, (3) adjusted my standard interest charges on unpaid accounts, (4) waived late payment on aged invoices, and - last but not least - (5) postponed billing you for long periods of time.

You mentioned the result. The trial result on your claim was a disappointment, unlike the counterclaim and costs, but the former was not for want of skill, diligence, time or effort on my part.

You have not replied to my invitations that you suggest a discounted fee or a payment plan. Your last email seems to suggest that you plan to avoid further obligations.

If the bill needs to be reviewed I estimate that three (3) days hearing would be ample. Unless I hear from you I will set the matter down before the Registrar.

Let me know how you wish to proceed.

[107] On January 9, 2023., the Lawyer filed the Appointment for this review.

[108] On March 9, 2023, the Lawyer wrote the Client, noting the Client had not made any payments on the final account and it was now past due for more than 60 days. He purported to give notice that he would start charging the contractual rate of interest [26.8% per annum] on all unpaid accounts starting on April 8, 2023.

[109] The Client responded as follows:

I withdraw formally the agreement with you on the interest rate of 2% per month compounded monthly. The so-called contractual rate is oppressive and was done in circumstances that I did not have independent legal advice and with coercion from you.

I protest that you charge 26.8% per annum on the final invoice without agreement or court order.

[110] On March 10, 2023, the Lawyer replied:

Your attempt to withdraw from the terms of our agreement plus your protest are noted. The terms of agreement, however, are not subject to unilateral after-the-fact termination.

Applicable Law

[111] The Lawyer bears the onus of proving the retainer terms and the reasonableness of his bills. In this case, the Client challenges the fees charged but did not take issue with the majority of the disbursements. He also raises limitation concerns relating to the final account issued.

[112] Section 71 of the LPA identifies matters to be considered by the registrar on a review:

Matters to be considered by the registrar on a review

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

(2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:

- (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
- (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

(3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:

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

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

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

- (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

[113] The discretion to be exercised by a registrar was summarized in *Davies v. Hunter*, 1995 CanLII 1028 [Davies] at para. 22:

22 Whatever the rule may have been in the common law courts in England, the factors which may be taken into account by a taxing officer in British Columbia today are found in s.71.1 of the Legal Profession Act. In *Roberts & Muir v. Price*, (1986) 1986 CanLII 773 (BC SC), 7 B.C.L.R. (2d) 211 (S.C.), Justice Southin concluded that on a taxation a taxing officer may consider whether a solicitor has shown reasonable care and skill, and "if the work is not up to standard he may deprive the solicitor of his fee, in whole or in part." The Court of Appeal dismissed an appeal from Justice Southin's decision brought on other grounds, but held that her approach was correct. In *Roberts & Muir*, Justice Southin makes the crucial distinction between disallowing a lawyer's bill for fees on the basis that the work done was of no value to the client, and making a finding of negligence which could result in recovery of damages. The taxing officer lacks jurisdiction to make the latter finding. The decision of a taxing officer that the work done by a lawyer was without value to his or her client, because what the lawyer did or failed to do caused the failure of a transaction, would not constitute issue estoppel in an action brought by the client for damages for negligence. But a Registrar is required to take into account the time reasonably expended and the result obtained for the client. If the Registrar concludes that the work performed was of no value to the client, because the lawyer acted without instructions, or failed to carry out his instructions competently and adequately, or took unnecessary or counter-productive steps, the Registrar may properly disallow some or all of the claimed fees and disbursements.

Pre-Hearing Conference

[114] On March 15, 2023, a pre-hearing conference was held before Registrar Gailey. She directed the Client to provide written particulars of his objections to the Lawyer's accounts and full particulars of any alleged negligence or deficient provision of legal services, or unnecessary steps or procedures. I address those below.

Analysis

Reliability / Credibility

[115] Reliability and credibility are briefly summarized in *Wagner v. Cooper*, 2024 BCSC 986:

- [7] Credibility and reliability are related but distinct concepts. Reliability involves the accuracy of the testimony of a witness. It engages consideration of the ability of a witness to accurately observe, recall, and recount the events in issue. Credibility centers on the

honesty of the witness. It involves an assessment of the trustworthiness of their evidence, based on their veracity and sincerity, as well as accuracy of the evidence provided:

Bradshaw v. Stenner, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd [2012] S.C.C.A. No. 392.

- [8] A witness who is not telling the truth is not providing reliable evidence. However, the reverse is not the case - a credible witness may still give unreliable evidence. Sometimes an honest witness will be trying their best to tell the truth and will believe the truth of what they are recounting, but nevertheless be mistaken in their recollection: R. v. H.C., 2009 ONCA 56 at paras. 41, 53-56.
- [9] The relevant principles to be applied when assessing the credibility of interested witnesses are discussed in Faryna v. Chorny, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at p. 357 and Bradshaw at para. 186.
- [116] The Lawyer tendered a relatively brief affidavit of justification which attaches numerous documents. Both Lawyer and Client gave oral testimony and were cross-examined by one another.
- [117] For the most part, the Lawyer's recollection of events was consistent with the documents and written communications between the parties at the relevant times. The Client's evidence occasionally diverged from the written communications and documents and was occasionally problematic.
- [118] For example, an issue in dispute is whether the Client initially executed the Lawyer's retainer letter dated September 14, 2016. The Client's evidence was that he did not recall receiving or signing the retainer letter around that time. He said he would not have agreed to pay 26.8% per annum interest on overdue amounts.
- [119] During the Lawyer's cross-examination of the Client, he took the Client to an email he sent the Client on August 22, 2018. It attached a calculation of the balance owing on unpaid invoices to August 31, 2018. The calculation included an interest calculation based on a 26.8% per annum rate of interest. The Client testified he had not received the email or interest calculation. He said he recalled that the email address the Lawyer had used was experiencing technical problems at the time and insisted he did not receive it. The Lawyer then put to the Client a reply email the Client had sent the Lawyer the same day from the same Client email address, stating:

Bruce:

Please call me at [# redacted] to discuss the interest charge, the proposed mortgage and an estimate of the future legal fees.

Dongdong

[120] The Client gave false testimony, in an apparent effort to disassociate himself from correspondence which showed the Lawyer had disclosed he was charging interest at 26.8% per annum. In several other instances, when certain correspondence which the Lawyer sent the Client included passages which the Client wished to avoid or disavow, the Client testified he had not read or taken note of that particular passage at the time. A theme underlying parts of the Client's evidence was that his mental state during this period was somehow compromised due to the pressures associated with loss of a large part of his personal wealth, the Li and LPP litigation and his dispute with his ex-wife.

[121] I do accept that the Client was under considerable personal, professional and financial pressure at the material times. However, he only addressed his mental health in vague and general terms when he testified in chief. He did not tender any supporting medical or counselling evidence which supported his suggestion that his ability to concentrate, comprehend or make decisions was somehow compromised.

[122] Overall, where the Lawyer's and the Client's evidence conflicted, the Lawyer's evidence was generally more reliable and more credible, save where I expressly indicate otherwise below.

Retainer Agreement / Interest Rate

[123] The parties disagree regarding formation of the retainer agreement.

[124] The Lawyer bears the onus of proving the general retainer. Thereafter, the Client bears the onus of proving the existence of a special contract limiting fees. See *Conkie & Company v. Free Quincy Productions Ltd.*, 2012 BCSC 33 at para. 103:

103 In *Re Beck*, [1925] 3 W.W.R. 64, 36 B.C.R. 76 (C.A.), Macdonald J.A. (as he then was) held that while the solicitor has the onus of proving the general retainer to do the work, once that is proven, the onus to prove a special contract limiting fees then devolves to the client.

[125] In his affidavit of justification, the Lawyer testifies that on September 14, 2016, he and the Client entered into a written retainer agreement in the form attached as Exhibit "A". The exhibit is an incomplete, unsigned draft retainer letter.

[126] In his oral evidence, the Lawyer testified that during their initial meetings (September 12 and/or 13, 2016) they discussed the basis under which the Lawyer was prepared to act. On September 13, 2016, he sent the Client an email advising he would draft an engagement letter, he asked that the Client arrange a retainer installment of \$10,000 and said he had agreed to charge at a reduced rate of \$400 per hour, plus top-up bonus at the end. He says he subsequently presented to the Client the retainer letter dated September 14, 2016. He recalled that both he and the Client had signed it at the Lawyer's office.

[127] The Lawyer said he normally keeps executed retainer agreements in a separate accounting file in his office. In August 2019, the Client asked him to provide a copy of the executed retainer letter. Neither he nor his assistant were able to locate it. On August 12, 2019, the Lawyer emailed the Client as follows:

PS We cannot locate a copy of the signed retainer agreement. Mary recalls you signing it in our office, but it appears to have been misfiled. Can you check your records for a signed copy? We will look again here too.

[128] There was no evidence tendered from the Lawyer's legal assistant Ms. Ho indicating she had observed the Client signing the retainer letter in or around September 2016. The Lawyer also did not mention in his email that he recalled having seen the Client sign the retainer letter.

[129] On September 17, 2019, the Lawyer emailed the Client materials which included an unsigned copy of the draft retainer letter dated September 14, 2016, Security Agreement, Mortgage, Prescribed Standard Mortgage Terms and related documents. The Lawyer's cover letter included:

Please note that we do not have an executed copy of the 14 September 2016 retainer agreement. Please sign the agreement on page 3 and return a signed copy to me at your earliest convenience.

[130] The final version of the retainer letter which the parties signed included handwritten modifications to the interest provision, discussed in more detail below. I presume those changes were made at the time the Client signed the documents on September 20, 2019.

[131] The Lawyer said it was his "invariable practice" to require that new clients sign a retainer agreement before he would begin work in earnest on their matter. The only circumstances under which he would not get a signed retainer agreement is when he had a "one-off" meeting with a client and no further services were necessary.

[132] The Client denied seeing or signing the retainer letter in or around September 2016. He reasoned that he would not have agreed to pay 26.8% per annum "killing" interest.

[133] During cross-examination, the Client was taken to several documents which highlighted that he had entered into retainer agreements with his own clients which provided that they pay him interest of 24% per annum on overdue balances. He was awarded pre-judgment interest at this contractual rate in a collection proceeding he took against a client in *Huang dba D.D. Huang & Associates v. D&S Maple Ridge Enterprises Ltd.*, 2019 BCCRT 1102 at paras. 44 and 46(b). In *Huang v. Ross Chocolates Ltd.*, 2010 BCSC 1005 at para. 100, the Client was awarded interest on unpaid accounts at 24% compounded annually, as set out in the retainer agreement in that case. The Lawyer argued that it lies ill in the Client's mouth to say that 26.8% per annum interest is objectionable when his own retainer agreement provides for a similar rate.

- [134] The Lawyer also argued it is not uncommon for retainer agreements to provide for a relatively high rate of interest on outstanding balances. He refers to Stanley T. Cope, *Personal Law Corporation v. Alden*, 2022 BCSC 826 at paras. 31-33:
- [31] The issue of interest rates charged by law firms on unpaid accounts often arises in the context of a review under the Legal Profession Act, S.B.C. 1998, c. 9 (LPA). The common complaint is that the rate of interest charged by a law firm typically exceeds that charged by a bank.
- [32] Law firms are not banks, and for the most part they do not want to be treated like a bank. The smaller the firm the more difficult it is to the law firm to carry a client's unpaid fees, particularly if the firm is faced with a number of clients who are not paying their bills in a timely fashion.
- [33] An interest rate on unpaid accounts in excess of the rate provided by a bank is meant to encourage the client to borrow from a financial institution to cover the cost of fees or disbursements rather than relying on the law firm to carry the unpaid account.
- [135] On this issue, I do not accept the Lawyer's evidence that he observed the Client sign the retainer letter on or around September 14, 2016. The unsigned version which he tendered in evidence is dated September 14, 2016. It identifies the Client and Client's law firm, D.D. Huang & Associates, as the client. It does not set out an address for either of them. It simply says "address" below each of their names. This appears to be a "placeholder" entry one would use in a template or working draft. This suggests the document tendered was an incomplete draft. It also provides that the letter was to be "Delivered". At the time, the Lawyer's office was located in downtown Vancouver, while the Client's office was in Richmond.
- [136] The first account the Lawyer issued to the Client is dated October 24, 2016. It includes time entries for the month of September 2016. These show the Lawyer had a "conference" with the Client on each of September 12 and 13, 2016. I interpret "conference" to refer to an in-person meeting. None of the entries for the balance of September, including the 14th, 15th, 16th, 22nd, 23rd or 28th, indicate the parties had any further in person conferences. There are several references to "telephone conferences". Accordingly, it does not appear the parties met in person on the date appearing on the draft retainer letter or at any time during the balance of that month.
- [137] If there was no in person meeting, the Lawyer would not have had the opportunity to observe the Client signing the retainer letter. As noted, there was no evidence from Ms. Ho that she had seen the Client sign it or that she received an executed copy from him. There is no indication the retainer letter was scanned and emailed to the Client. The lack of any mailing address and no indication of a courier or postage charge in the first account also suggest the retainer letter was not couriered or mailed to the Client.

- [138] I conclude it is more likely than not that the Lawyer and his assistant started to draft a retainer letter for the Client, but they did not get around to finalizing it and providing it to the Client in or around September 2016.
- [139] I do accept that during one or both of their two initial conferences, the parties had discussed and agreed that the Lawyer would charge the Client based on a discounted hourly rate of \$400 per hour plus a top-up bonus at the end of the case. These points are mentioned in the Lawyer's email to the Client dated September 13, 2016. There is no evidence that the parties agreed that the Client would pay the Lawyer 26.8% per annum interest on overdue accounts in their initial conferences. That issue was not mentioned in the September 13, 2016 email.
- [140] The Lawyer did subsequently provide services while under the mistaken belief that the Client had agreed to the terms of the September 14, 2016 retainer letter. That is reflected in several letters and emails which the Lawyer sent the Client. The Client did not raise any objection to correspondence in which the Lawyer calculated interest using the 26.8% per annum rate. That rate of interest is also set out in small print at the bottom of invoices the Lawyer issued to the Client. I conclude, however, that at no point had the Client actually entered into a binding agreement to pay that rate of interest.
- [141] This is not the end of the analysis regarding the applicable contract rate of interest. There were at least two subsequent changes to the interest arrangements.
- [142] On September 28, 2018, the Lawyer sent a letter to the Client via email confirming they had agreed to modify the interest rate charged on unpaid accounts to 7.5% per annum, but with the Lawyer indicating he was reserving the right to reinstate the original contractual interest rate upon giving the Client notice, if accounts remained unpaid for a period in excess of 60 days. There is no indication that the Client responded to this at the time.
- [143] On September 17, 2019, after discovering he did not have a signed retainer letter on file, the Lawyer sent the Client a new copy of that document for execution, together with a Security Agreement, Mortgage, Prescribed Standard Mortgage Terms, Acknowledgement of Receipt of Prescribed Standard Mortgage Terms form, Certificate of Independent Legal Advice and a prebill WIP report as of September 17, 2019 [WIP totalling \$294,255.22 + outstanding balance of \$21,428.99, for a total of \$315,684.21] .
- [144] On September 20, 2019, when the Client executed these documents (backdated to September 14, 2016), a handwritten amendment was made to the retainer letter:
- a) Deleting the sentence which provided for interest on unpaid accounts, namely, "You agree the pay interest of 2% per month compounded monthly (26.8% per annum) on all unpaid accounts". This effectively left the retainer letter with no internal contract interest rate; and
 - b) Adding in the left-hand margin, "modified by agreement";

- c) Two sets of initials in the left-hand margin, indicating that both the deletion and the addition had been agreed by the parties.

[145] It is not clear which modification the term "modified by agreement" refers to. There appear to be two possibilities:

- a) The revocable 7.5% per annum modification in the Lawyer's September 28, 2018 letter to the Client; or
- b) The contract rate of interest set out in the Security Agreement and Mortgage which accompanied the amended retainer letter.

[146] Regarding (a), I note the Lawyer did not include a copy of the September 28, 2018 letter as part of this package, nor did he expressly refer to the 7.5% per annum interest rate modification in the amendments made to the retainer letter or the other documents in the package.

[147] Regarding (b), the amended retainer agreement, Security Agreement and Mortgage were presented to the Client and executed by the parties at the same time. The Security Agreement and Mortgage both provide for contract interest at the rate of "8% per annum compounded semi-annually". They also contain clauses stating that they are the entire agreement between the parties and no modification may be made unless done in writing and signed by the parties. None of the agreements contain a provision which allows the Lawyer to unilaterally elect to increase the contract interest rate to 26.8% per annum. That rate was unconditionally deleted from the amended retainer agreement.

[148] Where a term in a retainer or other agreement with a client which was drafted by the Lawyer is ambiguous, the contra proferentem interpretive principle applies, such that the interpretation which is least favourable to the Lawyer and most favourable to the Client prevails. In this case, that means "modified by agreement" appearing in the amended retainer letter refers to the contract interest rate specified in the accompanying Mortgage and Security Agreement.

[149] While the Lawyer's attempt to subsequently register the Mortgage with the Land Title Office was not successful, that does not detract from the legal force and effect of the amended retainer agreement, Security Agreement and Mortgage. The modified contract interest rate remained effective despite the Land Title Office's refusal to register the Mortgage.

[150] The Lawyer subsequently purported to give the Client sixty days' written notice that he was unilaterally reinstating the 26.8% per annum interest rate. Given my conclusions above, that option was simply not available to him at the times he purported to invoke it.

[151] I conclude that the parties never entered into a binding agreement which required the Client to pay the Lawyer 26.8% per annum interest on overdue accounts. Between September 12, 2016 and September 19, 2019, there was no agreement regarding a contractual rate of interest. On September 20, 2019, they entered into an agreement which provided that the Client would pay the Lawyer interest of 8% per annum, compounded semi-annually on overdue amounts. Arguably, this was back-dated to September 14, 2016.

Independent Legal Advice

[152] The Client argues the Lawyer failed to tell him to obtain independent legal advice (ILA) before he executed the amended retainer letter, Security Agreement and Mortgage. The Lawyer forwarded those to the Client on September 17, 2019. On September 20, 2019, the Client attended at the Lawyer's office, where, after negotiating and making handwritten changes to the amended retainer letter and Security Agreement, he signed the amended retainer agreement, the Security Agreement (as witnessed by Ms. Ho) and the Mortgage (executed before Mr. Ross). He also signed an Acknowledgement of Receipt of Prescribed Standard Mortgage Terms.

[153] It is evident from the correspondence tendered that the Lawyer and Client had been discussing for an extended period that the Client would give the Lawyer some form of security due to his inability to pay. The type of security discussed included a mortgage against the Client's interest in his former family home, and some other possibilities.

[154] As early as May 2018, with a trial date approaching, the Client raised the idea of granting the Lawyer mortgage security against his interest in his former family home. In an email dated May 16, 2018, the Lawyer confirmed their conversation:

You have asked me to consider taking a form of security to cover future work. You have informed me that you and your ex-wife are registered joint owners of your home in Coquitlam with a probable market value of approximately \$1.7 m. The only charge on title is a mortgage to CIBC with current balance of \$488,000. You also claim an interest in the title to real property you transferred to your ex-wife's parents on the eve of your separation. There is, as well, your interest in the proceeds of the litigation with [Ms. Li].

I will consider your proposal and get back to you with a response before you return to Canada in June. I suspect that a charge on your interest in the matrimonial property might be sufficient to resolve my concerns. I will need to take advice from a real property lawyer to be sure.

[155] On August 21, 2018, the Lawyer sent the Client another email regarding mortgage security:

5. We discussed mortgage security for payment of future bills. I believe we have the necessary information to prepare the mortgage and will send a proposal for your review.

[156] On April 9, 2019, the Lawyer again raised the issue of mortgage security and said if such an arrangement was made, the Client should obtain independent legal advice:

You have not retained me on a contingency fee agreement. I need you to pay for services rendered on an ongoing basis. While I am sympathetic to your financial situation and I have continued to work on your file despite non-payment for long periods of time, we are now at the brink of trial. The office here will be working long hours on your behalf through the end of trial.

Like you I run a small law firm. I am unable to sustain the level of work required to run a 10-day trial of this magnitude without getting paid as we go.

I prepared to consider an agreement for part payment of no less than 50% of actual fees on an ongoing basis +100% of disbursements, but we need to discuss terms of security for payment.

If we make an arrangement for mortgage or other security you should get independent legal advice.

[underlining added]

[157] On April 10, 2019, the Client wrote to the Lawyer using his firm's letterhead offering his interest in the former family home as a source of payment:

1. 3406 Gislason Avenue, Coquitlam, joint tenant with Zhong Yu Lu (\$1,480,000) minus roughly \$480,000 mortgage;

These assets are available for payment to your legal fees.

[158] Finally, in the Lawyer's letter of September 17, 2019 enclosing the retainer letter, Security Agreement, Mortgage and related documents, the Lawyer expressly recommended that the Client obtain ILA:

I recommend that you obtain independent legal advice before executing these documents.

[159] I also note that one of the documents included in the package was a certificate of independent legal advice. That should have put the ILA issue front and center in the Client's mind. The Client chose to not obtain ILA.

[160] I do agree it was not appropriate for Mr. Ross to have witnessed the Client's execution of the Mortgage in particular. The Lawyer and Mr. Ross had separate practices but they were in an ostensible partnership. The Lawyer and Mr. Ross should have insisted the Client go elsewhere to execute the Mortgage in particular.

[161] However, in my view it is also relevant that the Client has extensive legal education and training. He has three law degrees, LL.B, LL.M and LL.D., from Canadian universities. He was a member of the BC bar who had been in active practice in BC since at least about 1992, with a focus on corporate commercial law. He was someone who one might reasonably expect to provide ILA regarding the types of documents involved here. The Client also failed to address in his evidence: (a) that he was not aware that he ought to get ILA, (b) he did not suggest that he wanted or needed ILA, and (c) he did not identify what if anything about the agreements he executed on September 20, 2019 he did not understand at the time. He simply pointed to the lack of ILA in an apparent effort to avoid the consequences of having

executed the agreements.

- [162] The Client made general allegations that the Lawyer had exerted undue influence and pressure on him to sign the agreements. While I accept he was under pressure due to his stained financial circumstances and the litigation he was engaged in, this is pressure of his own making and not something created or exploited by the Lawyer. The Client also did not tender evidence establishing that he was materially distracted, impaired or incapable at the relevant time.
- [163] The Client was well aware of how much he had paid the Lawyer up to that point in time, and the outstanding balance on accounts that had been issued. The Lawyer had provided a prebill WIP report setting out in detail the Lawyer's accumulated unbilled time, disbursements and anticipated taxes. The Lawyer had clearly indicated he intended to issue an account for the WIP when the Client had some prospect of paying. The principal amount in the Mortgage was set at \$450,000. The Lawyer had insisted on receiving security as a condition of continuing to act. At various points the Client proposed security. The Client was well aware of the reason these documents were necessary and their intended effect.
- [164] The agreements also provided significant benefits to the Client. They established a a favourable contract interest rate on outstanding balances. They helped ensure the Lawyer would continue to act for the Client in the Li and LPP litigation despite the Client's inability to pay on an ongoing basis. While there was a recital in the Security Agreement which indicated the Client acknowledged responsibility for \$325,000 in unbilled services which had accumulated to that point in time, that would not be due and owing until the Lawyer actually issued an account. Nothing in the agreements purported to deprive the Client of his statutory right to review the Lawyer's account(s) if he wished to do so.
- [165] As it turned out, the Lawyer was not able to register the Mortgage with the Land Title Office. Severance was necessary before the Mortgage could be registered. It appears that registering the Mortgage was never a practical option until ex-wife's claim was addressed. In any event, later (in 2022) the Client agreed to transfer his interest in the former family home to his ex-wife as part of the settlement of their family dispute. He did so without giving notice to the Lawyer. This has effectively put his interest in that property out of the Lawyer's reach for collection purposes.
- [166] The Client was not disadvantaged by executing the subject documents. To the contrary, he improved his circumstances significantly by doing so. I am not persuaded that there was any undue influence or improper pressure exerted by the Lawyer in the circumstances.

Contingent Fee Agreement / Common Expectation

[167] The Client argues the parties had a tacit agreement, an understanding or a common expectation that, in the event the Client's claim was unsuccessful, the Lawyer's unbilled WIP would not be billed or collected. He occasionally referred to this as a contingent fee agreement. Among the facts which the Client suggests support his view are:

- a) The Lawyer indicated he would negotiate an appropriate bonus if he won the case, and
- b) The Lawyer's long delay in issuing a final account for his services. The December 7, 2022 account was issued more than three years after the bulk of the trial-related services were provided, and long after Justice Adair issued her trial reasons.

[168] The Lawyer denies the parties ever had a tacit agreement, an understanding, a common expectation or a contingent fee agreement of the sort alleged by the Client.

[169] The Client did not offer any authorities which supported his argument that a contingent fee agreement could be found absent express agreement of the parties. I note that Rule 8-3(a) of the Law Society Rules published by the Law Society of BC requires that a contingency fee agreement be in writing. The only contingent fee language in the amended retainer letter relates to a bonus being discussed at the successful conclusion of the file. I also note that on April 9, 2019, the Lawyer wrote to the Client stating, "You have not retained me on a contingency fee agreement". Later he stated, "I need to be paid for my services and cannot afford to run this case on the chance of future recovery." The Client did not take issue with this at the time.

[170] The Client did not tender any evidence indicating the parties had ever discussed the Lawyer abandoning the accumulated WIP. The opposite is the case. The Lawyer clearly and repeatedly indicated that he intended to eventually issue an account for this. The only consideration holding him back from doing so was the Client's inability to pay in a timely manner. The Lawyer wished to avoid remitting PST and GST until there was some prospect of the Client actually paying. In the interim, he did keep the Client informed of the accumulating WIP by sending updated pre-bill reports from time to time. There was considerable delay in issuing a final account after the Lawyer ceased acting, but at no time had he indicated he had changed his intentions regarding billing the accumulated WIP.

[171] I conclude there was no tacit agreement, no understanding and no common expectation that, in the event the Client's claim was not successful, the Lawyer would forego issuing an invoice for or pursuing collection of accumulated WIP. There was also no contingency fee agreement of the type asserted by the Client.

Limitation Period

- [172] The services in the Lawyer's final account fall between March 15, 2019 and November 9, 2021. He issued it on December 7, 2022. He filed the appointment to review his accounts on January 9, 2023.
- [173] The Client argues the Lawyer issued the final account outside the applicable limitation period and failed to start this review within 2 years from when most of those services were provided. The majority of the services relate to preparation for and conduct of the trial, most of which occurred in 2019.
- [174] The trial initially concluded on September 27, 2019. In October 2019, the Lawyer made a post-trial application to amend the Client's notice of civil claim to add a claim in conversion as against Daqi. That application was eventually granted. The trial was re-opened on February 7, 2020 to deal with the conversion claim. Justice Adair issued her trial reasons on November 16, 2020. The parties exchanged written submissions on costs in late January 2021. Justice Adair issued her costs reasons on February 24, 2021.
- [175] The Lawyer argues he issued the accounts and filed the appointment to review them within the applicable 2-year limitation period. He stopped work in relation to assessment of Daqi's costs claim on May 10, 2021. He sent the Client a notice of intention to act in person, which the Client did not sign and file until June 17, 2021. Until then, the Lawyer continued to receive correspondence from Daqi's counsel as counsel of record.
- [176] Section 6(1) of the Limitation Act, S.B.C. 2012, c. 13 applies to contracts for legal services.

Basic limitation period

6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

- [177] In *MacLennan v. Clough*, 2011 BCSC 743, affirmed 2012 BCSC 62, District Registrar Cameron, as he then was, noted that where there is an entire agreement for legal services, the limitation period applicable to a lawyer's account starts to run when the work the lawyer was retained to do was completed. At paras. 28-31:
- [28] While a client may by contract agree on terms with his or her solicitor mandating the delivery of interim accounts that was not the case here. The client did not require interim accounts and there was no obligation on the part of the solicitor to render them.
- [29] In cases such as this where there is an entire contract for legal services it may not be possible for the solicitor to fairly value his or her services until the matter is at an end. While the solicitor did deliver interim accounts before and after the settlement was reached in 2001, taking into account her hourly rate and the result obtained for the client, she decided not to bill for her services after 2002 until the retainer was completed. She knew that some more work would be required as May 1, 2008 approached and the final payment of

\$600,000 became due to her client and for that reason there was no sense in her mind that matters were complete at any time before 2008 even if there was a hiatus after 2004.

[30] Counsel for the client also looked to the common law for support and cited *Coburn v. Colledge* [1897] 1 Q.B. 702 (Eng. C.A.) for the proposition that a cause of action for work done by a lawyer arises upon the work being completed.

[31] The Master of the Rolls, Lord Esher, said:

Applying that to a case like the present, when the plaintiff had completed the work, under the old course of pleading, alluded to by my brother Lopes, he could have brought his action, declaring for money payable for work and labour done at the request of the defendant.

For these reasons, I think that the cause of action in this case, to use the language of the statute of Anne, was "given, accrued, fallen or come" the moment that the work which the plaintiff was retained to do was completed.

[178] In *Nathanson, Schachter & Thompson v. Inmet Mining Corp.*, 2009 BCCA 385 at para. 47, the court of appeal noted that where there is a retainer to conduct an action, it is an implied term that the lawyer will take all steps necessary to bring the action to an end:

[47] In the case of a retainer to conduct an action, it is an implied term that the solicitor will take all steps necessary to bring the action to an end. In other words, such a retainer is an "entire contract": *Underwood, Son, & Piper v. Lewis* [1894] 2 Q.B. 306 at 309-310, 313 (C.A.); *Arctic*, supra, at para. 48; *Morrison Voss v. Smith*, 2007 BCCA 296, 69 B.C.L.R. (4th) 290 at para. 32. It follows that unless the client agrees otherwise, the solicitor is not entitled to any fee under an entire contract until he or she has completed the work.

[179] In the present case, the retainer originally contemplated the Lawyer would start and prosecute the Client's action against Ms. Li, LPP, Daqi and other Li family members. The claim against the other family members was eventually abandoned. The scope of the retainer expanded to include defending the Client from Ms. Li and LPP's counterclaim. The retainer came to an end shortly after the Lawyer prepared written costs submissions, received and reviewed the supplementary costs reasons and helped finalize the formal order after trial and costs order. The parties agreed the Lawyer was no longer acting by May 10, 2021. Thereafter, the Client acted for himself in respect of Daqi's costs assessment and the appeal of the trial order. The Lawyer gave the Client pro bono assistance preparing a response to Ms. Li's complaint to the Law Society of BC and addressing certain minor issues in the Client's matrimonial litigation. The latter two issues were not part of the retainer.

[180] I also note there was a temporary suspension of the running of limitation periods during the COVID-19 pandemic, between March 26, 2020 and March 25, 2021. Two ministerial orders and one regulation were made under the Emergency Program Act, R.S.B.C. 1996, c. 111 (the "EPA"). These included on March 26, 2020, Ministerial Order M086, the Limitation Periods (COVID-19) Order, on April 8, 2020, Ministerial Order M098, the Limitation Periods (COVID-19) Order No. 2 and on August 4, 2020, B.C. Reg. 199/2020, the COVID-19 (Limitation

Periods in Court Proceedings) Regulation. On December 20, 2020, Order in Council 655/2020 was made. It provided that suspension of limitation periods ended effective March 25, 2021.

[181] I conclude the Lawyer issued his final account and filed the appointment to start this review within the applicable 2-year limitation period. The limitation period did not begin to run until the Lawyer completed work in relation to trial costs and finalization of the formal orders.

Fee Estimate / Budget

[182] The Client argues the Lawyer is bound by the Litigation Budget he sent to the Client on August 30, 2018. It noted the Lawyer had previously issued accounts totaling \$130,000 all inclusive. Of this, the Client had paid \$100,0582 and \$29,468 remained owing.

[183] The Lawyer set out numerous qualifying remarks throughout the document, emphasizing that the figures were intended to be an extremely rough estimate. He then set out various stages and estimated future costs of each. For ease of reference, I reproduce the figures here:

Discovery (documents & oral examination)

\$10,000 - \$20,000

Applications

\$40,000 - \$100,000

Other Pre-Trial Preparation

\$25,000 - \$30,000

Trial (assuming 20 hearing days):

\$150,000 - \$200,000

TOTAL

\$225,000 - \$350,000

[184] Under this budget, the Client's total cost of the litigation, including the previously issued accounts, was accordingly \$355,000 - \$480,000. Note that the budget figures are framed as being inclusive of disbursements and applicable taxes.

- [185] The Client argues that after issuing the Litigation Budget, the Lawyer never referred to it again, he did not track actual results against the budget, nor did he revisit or revise the budget. The budget should be considered binding on the Lawyer. Further, several of the applications which the Lawyer included in the budget did not take place, so the amounts attributable to them should be deducted. Unfortunately, the Client did not provide his own calculation of what he says the appropriate budget-based totals are.
- [186] The Lawyer argues the Litigation Budget was not a quote, fixed fee or "true estimate". It was not put forward at the start of the litigation as an inducement to the Client to enter into the retainer. It arose part-way through the retainer, after \$130,000 [\$107,000 in fees] had been billed. It was provided in response to the Client's request for an estimate of future legal costs. It is subject to several disclaimers.
- [187] The Lawyer's suggestion that the budget ought to be treated as having less significance because it was presented while the litigation was in progress, as opposed to at its outset, is not persuasive. The budget was presented roughly 9 months prior to the start of trial. The litigation had already proven to be expensive. The remaining pre-trial steps and trial itself were going to be even moreso. The Client was reasonably concerned about the cost going forward. That cost would also reasonably be expected to factor into the Client's decision making regarding potential settlement versus proceeding to trial.
- [188] The Lawyer argues that after he issued the budget, he kept the Client informed of the accumulating WIP by providing pre-bill reports from time to time. The Client executed the Security Agreement, which included in the recitals that as of September 17, 2019, the Client was responsible to the Lawyer for unbilled legal fees, disbursements and projected taxes in the amount of \$325,000, and that the Client would be incurring further legal fees, taxes and disbursements of about \$75,000 for the continuation of the trial. The Mortgage, which was security for unpaid and anticipated legal expenses, was for the principal sum of \$450,000. This was in addition to the amounts the Client had already paid. These figures clearly exceeded the amounts in the Litigation Budget and the Client did not take issue with this at the time.
- [189] I conclude that, read in its entirety, the Litigation Budget does not constitute a guarantee or "true estimate" of the sort addressed in *Roberts & Muir v. Price*, [1987] B.C.J. No. 2279, 1987 CanLII 2505 (B.C.C.A.). That said, even rough estimates can be relevant to determination of a fair fee. In *Guild Yule LLP v. Heck*, 2022 BCSC 1848 at paras. 89-91 and 93, Associate Judge Muir reviewed authorities addressing the import of fee estimates:
- [89] Numerous decisions have concluded that an estimate, even a ballpark estimate, is relevant to the analysis of a fair fee.
- [90] Counsel have an obligation to provide proper and considered advice to their clients. As was noted by Master McDiarmid in *0751548 B.C. Ltd. v. Burke*, 2015 BCSC 665:

[91] In determining the effect of the fee estimate given in writing by Mr. Burke on June 7, 2013, and the oral estimate given on November 13, 2013, I have reviewed the Annotated Legal Profession Act by Gordon Turriff, Q.C. pages 8-77 to 8-78. A summary of relevant annotations is as follows:

[...]

* Lawyers are bound to use reasonable care and skill when estimating the cost of particular pieces of work.

* Lawyers should give clients clear, specific and unambiguous information about the cost of legal services

[91] A similar conclusion is expressed by Master Tokarek in *Koffman Kalef LLP v. Identity Rehab Corporation*, 2010 BCSC 27:

[32] When a client retains a solicitor, a duty arises on the part of that solicitor because of the relationship of trust and confidence, and consequently there is a requirement on the lawyer to be candid and transparent in his dealings with the client. Here the lawyers had every imaginable opportunity to inform the client of the magnitude of increase in the estimated fees. There is nothing in the evidence before me to suggest any rational basis for an experienced lawyer to make an estimate of \$100,000 for an IPO and end up charging three times that amount without any indication to the client. Granted the estimating of fees is certainly not an easy task in many instances, but once a lawyer embarks upon that course of action, he is obliged to not only be as reasonably accurate as possible but to advise the client of any unusually high increase beyond the estimate.

[93] Estimates, even ballpark estimates, are important to clients. As was noted in *Best Industries et al v. Fulton and Lawson Lundell LLP*, 2006 BCSC 611 by then Registrar Blok:

[28] The other factor is the estimate itself. Although I have found that it is not a fixed fee quote nor even a true estimate, as the authorities define that term, but merely a preliminary or ballpark estimate, I conclude that this must still be taken into account in moderating the amount of fees that are properly charged in this matter. Even ballpark estimates give rise to expectations on the part of clients, expectations which can lead to most unpleasant surprises if the ultimate bill exceeds the estimate given by a material amount. The solution, of course, is for the solicitors to disabuse the client of those expectations as soon as it is reasonably known that the estimate is no longer accurate, even on a ballpark basis. Thus I have concluded that the fee estimate of \$30,000 must be taken into account in moderating the fee assessment in this case.

[190] The Lawyer did provide occasional updates regarding accrued WIP which, if one were to sit down and do the math, indicated that amounts previously billed + WIP + anticipated future legal expenses had exceeded the budget. There is no evidence, however, that the Lawyer ever had a discussion with the Client about the extent to which actual results had diverged from the budget, or the reasons why that was happening. Even though I have found that the

Litigation Budget is not strictly binding on the Lawyer, it is still appropriate to take it into account in moderating the fee assessment.

- [191] Comparing the Litigation Budget to the actual accounts issued is a challenge, as neither of the parties provided a comparative analysis. The Trial cost in the budget assumed 20 days of trial based on \$7,500 - \$10,000 per day. The actual trial ended up occupying 27 days, several of which related to the post-trial application to amend pleadings to add a claim in conversion against Daqi and reopening the trial to address that issue. Applying that rate to the additional days would increase the budget allowance for Trial by a range of \$52,500 - \$70,000. Some of the pre-trial applications referenced in the budget did not occur. The Mareva injunction application was never set for hearing. The substituted service applications did not proceed. There were several applications for documents, to amend pleadings and to extend discovery of the Client which were not referenced in the budget. Daqi's evidence for trial ended up being taken by video deposition, which was not contemplated when the budget was prepared. Those changes appear to more or less balance each other out. The budget amounts, adjusted for actual length of trial thus appear to range between about \$130,000 + [\$225,000 + \$52,500 =] \$277,500 = \$407,000 on the low end to about \$130,000 + [\$350,000 + \$70,000 =] \$420,000 = \$550,000 on the high end. These amounts are all inclusive.

Billing More Than 8 Hours Per Day

- [192] One of the Client's objections was that there were 32 days on which the Lawyer recorded more than 8 billable hours. All of these involved either preparation for trial or trial days. He says the Lawyer cannot possibly have been productive beyond 8 billable hours in a single day, so any time recorded beyond this is presumptively unreasonable.
- [193] The Lawyer testified that days in excess of 8 billable hours are commonplace in the period leading up to and during trial. On occasion he was at work as early as 3:00 am to start preparing for court while trial was in progress. He emphasized that he was and is an avid athlete who keeps himself in good physical condition so he able to endure the long hours necessary during trial.
- [194] The Client did not take issue with the accuracy of the amount of time the Lawyer recorded. His focus was on whether the Lawyer could possibly work productively beyond 8 billable hours per day. The periods during which counsel is preparing for and conducting a civil trial can be highly demanding. In this case, the Lawyer and his associate were facing three experienced counsel acting for Ms. Li / LPP and two acting for Daqi. I accept that is common for trial counsel to work productively in excess of 8 billable hours on they are preparing for or in trial. I accept that the Lawyer did so, subject to my comments regarding work product evidence set out below.
- [195] I turn now to consider the factors set out in s. 71(4) of the LPA.

Complexity, difficulty or novelty of the issues involved

- [196] The Lawyer says this litigation was highly complex, difficult and novel. The Client's claim included civil fraud, unjust enrichment, conspiracy, breach of contract, mistake, trespass and conversion. The Counterclaim involved allegations of breach of fiduciary and professional duties by the Client. The scope of the dispute spanned the entire personal and professional relationship of the Client and Ms. Li / LPP.
- [197] The Lawyer testified that the litigation was hard fought. By way of example, counsel for Ms. Li and LPP served a notice to admit and appointment to examine the Client for discovery while the Client was in China. They noted him in default for failing to attend the examination. An application was necessary to withdraw deemed admissions for failing to serve a reply to notice to admit in a timely manner. Several months prior to trial, Daqi advised he was moving to China, which made it necessary to examine him for discovery and to take his video deposition evidence on short notice. All parties indicated they were seeking special costs against the other throughout the litigation.
- [198] The Lawyer highlights that Ms. Li had extensive financial resources available with which to fund vigorous litigation. This included the net funds she had received from the Client, plus approximately \$18 million that Mr. Rao had invested in LPP. Ms. Li and LPP had at least three lawyers working on the file - Mr. Olthuis, Mr. McEwan and Mr. Bjornson of Hunter Litigation Chambers. Daqi had at least two lawyers acting for him - Mr. Underhill and Mr. Wu of Arvay Finlay LLP.
- [199] Adding to complexity was the fact that most documents were in Chinese and thus required translation. Ms. Li and Daqi required an interpreter. Ms. Li and LPP had also obtained a sealing order early in the litigation. It remained in place and created complications for all parties and the trial judge until Justice Adair set it aside on her own motion.
- [200] The Lawyer also testified that numerous applications were brought, although not all of them went to a hearing. This included a Mareva injunction application, sealing order and application for production of the Client's solicitor files, substituted service, setting aside deemed admissions, cancellation of the CPL the Client had filed on title to a property owned by Ms. Li, determining the scope of privilege over the solicitor's files and two short leave applications. The Client's ex-wife also asserted an interest in the proceeding and made an application for a limited lifting of the sealing order.
- [201] The level of complexity is also reflected by the fact that trial occupied 27 days. Justice Adair's trial reasons were 143 pages and 548 paragraphs. Her costs reasons were 13 pages and 48 paragraphs.
- [202] The Client did not take issue with the complexity, difficulty or novelty of the issues involved, but argues that the Lawyer's services were negligent or inadequate in several respects. I address those issues below.

Skill, specialized knowledge and responsibility required of the lawyer

- [203] The Lawyer argues this matter required a high level of skill on his part, both with regard to procedural issues and substantive law. The litigation was of the utmost importance to the Client, having transferred the majority of his life savings to Ms. Li and member of her extended family. His other assets were tied up in family litigation with his ex-wife. Ms. Li and LPP's counterclaim made serious allegations of professional misconduct. They retained an expert, Gavin MacKenzie, an Ontario lawyer and author of "Lawyers & Ethics: Professional Responsibility and Discipline". He provided an expert report addressing professional conduct issues. The Lawyer was successful in getting Mr. MacKenzie's report declared inadmissible at trial.
- [204] The Client argues the Lawyer was negligent and his services were deficient. I pause here to note that a registrar does not have jurisdiction to make findings on whether something the lawyer did or failed to do constitutes negligence. See the excerpt above from Davies above at para. 22. The registrar can determine whether the lawyer has shown reasonable care and skill, and if the services in question were not up to standard, deprive the lawyer of their fee, in whole or in part. The issue is whether the work performed had value to the client.
- [205] Firstly, the Client notes the action involved a claim in civil fraud allegedly perpetrated by Ms. Li and certain members of her family. He says the Lawyer failed to properly plead several key discussions he had with Ms. Li as particulars of his fraud claim. Justice Adair noted this at para. 166:
- [166] I note as well that none of this discussion about "the future" or "down the road in life" is pleaded as part of Dr. Huang's fraud claim against Ms. Li. It is not unique in that respect, as many of the discussions Dr. Huang recalled at trial, and words he claimed Ms. Li said to him, were not pleaded as part of his case.
- [206] With regard to the fraud claim against LPP, Justice Adair found the Client had not pleaded any allegations of fact that LLP had made any misrepresentations to him which could ground a claim in deceit against it. This was referred to as an "orphaned plea". She concluded that the Client had failed to plead and prove a fraud claim against LPP. See the trial reasons at paras. 354-358.
- [207] The Lawyer argued that while Justice Adair expressed some concern, overall she found the fraud claims had been adequately pleaded. At para. 360 of her reasons:
- [360] The NCC is not, in my view, a model pleading of a fraud claim. It could have been drafted in a way that was both clearer and more concise, with more attention to the basic elements of the cause of action. However, it provides an adequate framework, given the function of pleadings, to analyze the evidence, find facts and reach conclusions.

- [208] Justice Adair did identify some problematic aspects with the fraud-related pleadings. The dismissal of this particular claim against LPP was based in part on inadequacy of the pleading. This was only one of several claims that were advanced.
- [209] Secondly, the Client complains the Lawyer instructed him to prepare a detailed chronology of events. He did so, but says this proved to be disastrous at trial. Justice Adair did not believe he could have such a good memory of events. This destroyed his credibility with the court. The Lawyer argues his advice to prepare a chronology was sound. The problem was that Justice Adair found that the Client was not a credible witness.
- [210] In her reasons, Justice Adair addressed the Client's credibility in detail. See for example, reasons paras. 324-327:
- [324] As can be seen from the review of the evidence above, Dr. Huang professed to have a detailed and remarkable memory of exact words spoken by Ms. Li at the relevant times, and of other events. Indeed, Mr. MacLeod argues that Dr. Huang's ability consistently to give detailed evidence including specific locations, dates, words spoken and by whom, should be a reason to prefer Dr. Huang's evidence.
- [325] I do not agree.
- [326] Dr. Huang did display an apparently keen recall for details, including (in his recounting) exact words spoken by Ms. Li at critical times and essential to support his claims against her. In other words, Dr. Huang's memory for details that supported his claims was remarkable and striking. However, the contrast between what Dr. Huang was able to remember when it mattered most for his case, and other things that he could not or struggled to recall was also striking. It made Dr. Huang's apparent ability to remember precise details suspicious, and, ultimately, unconvincing. It made him, in my view, a less credible and less reliable witness, not a more credible or reliable one.
- [327] I am not criticizing Dr. Huang for having a good memory. Given Dr. Huang's significant academic achievements, it is very likely he has a good memory, as well as good study habits. Rather, I have concluded that Dr. Huang's memory was suspiciously good when it was most important for his case, in contrast to his memory otherwise.
- [211] And at para. 335:
- [335] However, in my view, a witness's ability to resist the influence of interest to modify his recollection is a significant factor in my assessment of Dr. Huang's credibility and reliability as a witness. I have concluded that his ability is weak. Dr. Huang is a proud man, with a life-time of accomplishments. He described himself as the only Chinese-Canadian doubly-qualified lawyer in the world, a poet of Chinese descent brimming with talent, a professor and scholar with profound thinking. That is how he sees himself. He also sees himself as attractive to younger women: for example, he believes that his second wife fell in love with him at first sight. I have concluded that Dr. Huang has a very strong interest in maintaining his self-image. In that light, the only excuse acceptable to Dr. Huang's pride,

based on how things turned out with Ms. Li, is, not that he was love-struck and blindly infatuated with her, but that he was tricked and lied to by her. In my view, his memory about events has yielded to his pride, and his recollection of events has been modified accordingly. As a result, in my opinion, Dr. Huang's memory about what happened with Ms. Li is not reliable.

[212] The Lawyer's advice to create a chronology was prudent and was not the source for the adverse credibility findings made against the Client.

[213] Thirdly, the Client complains the Lawyer counselled him not to tell the truth about having been stopped by the police for suspected impaired driving when he was returning home on the same evening that he wrote and signed a "gift note" in favour of Ms. Li.

[214] Some background is necessary to understand this point. One of the key issues at trial was whether the Client had gifted the disputed funds and property to Ms. Li and her family members.

[215] On the evening of July 17, 2016, the Client was at Ms. Li's home. He testified that she had served him several types of alcohol. At some point she asked him to write a note confirming that the funds he had transferred to her had been a gift. See the reasons at paras. 234-235:

[234] I continue with Dr. Huang's recollection of events:

Q That evening, had there been any alcohol consumed?

A Yes.

Q How did that happen?

A She has alcohol -- Chinese hard liquor is on the top cupboard of her kitchen, not chicken -- kitchen. She -- and with a chair, and she specially get it out. She said, Dongdong, I want you -- to teach you very special -- this is a very special liquor left over from my previous very important occasions; this is very special liquor -- Chinese liquor. Then we had wine, which is purchased by me at the store -- you know, left at her home. And then we had beer, and we had actually red and white wines.

Q After the conversation where she referred to -- that you've referred to, did she say anything else about the funds?

A Yeah. She said, to prove you're giving, just put it down -- write it down. She grabbed the paper right away, and put it in front of the -- on the table and asked me to write it down.

Q And did you write anything down?

A Yes. I write down -- I said -- I write down a very -- I was a little bit drunk and very scratched [sic] saying that I give you 6.6 million RMB.

[235] Dr. Huang identified a note in his handwriting as what he wrote down and signed. The note reads [English translation; all sic]

I gave PeiPei Li CNY 6.6. million Yuan. I will never go back on my word and never ask for repayment. This is the proof.

Dongdong Huang

July 17, 2016.

[216] The Client said Ms. Li was standing next to him and told him what to write. It was after midnight at the time. They hugged and departed, driving home to Coquitlam. One of the points the Client wanted to emphasize at trial was that when he wrote the note, his judgment was impaired to some extent by the alcohol Ms. Li had served him. At reasons para. 239:

[239] On cross-examination, Dr. Huang denied that he wrote and signed the Gift Note in the context of Ms. Li's earlier reprimand of him as "incorrigible." When Dr. Huang was asked whether he was saying that he was impaired by alcohol when he wrote and signed the Gift Note, he said that he was not, although he said that he and Ms. Li had had a lot to drink that evening. However, he also said that he drove home from Ms. Li's house, and that he was not driving drunk.

[217] Before me, the Client testified that he had told the Lawyer that when he was driving home that evening, he had been stopped by the police for suspected impaired driving. He was not found to be over the legal limit and was not charged. The Client appears to believe that had this evidence been offered at trial, it would have bolstered his argument that his judgment was impaired by alcohol when he wrote the gift note.

[218] The Lawyer testified that the Client disclosed the police stop to him for the first time during their preparation for trial. He chose not to lead this incident in the Client's direct examination. He did not consider it to be relevant or helpful to the Client's case. He denies the allegation that he counselled the Client to give false evidence.

[219] I accept that the Lawyer did not counsel the Client to give false evidence about the police stop. He chose not to volunteer it during the Client's examination in chief. In any event, this does not adversely affect my assessment of the Lawyer's reasonable fee.

[220] The Client's particulars of objections included complaints about the Lawyer's examination for discovery and cross-examination at trial not being effective. The Client did not tender evidence which supported these assertions or make detailed submissions. These issues have no merit for purposes of this review.

- [221] The Client complained the Lawyer had used an over-cautious approach to deal with the Client's case by initiating a Mareva injunction application which was never heard on its merits, filing a CPL on title to a property owed by Ms. Li which was later canceled from title and by not consenting to a sealing order application made by Ms. Li. He argues that all of these resulted in unnecessary legal expenses.
- [222] The Lawyer disputes the Client's characterization of his approach. He prepared and filed the Mareva injunction application, but it ended up not being necessary to have it heard on its merits due the correspondence he sent to financial institutions at which Ms. Li and LPP had accounts. That resulted in a temporary freeze of certain accounts. There was also a parallel injunction application made in Mr. Rao's action. It resulted in Ms. Li being allowed to complete her purchase of a ~\$10 million property in Shaughnessy. Once completion of that purchase, Ms. Li owned a substantial amount of real estate in Vancouver. That undercut any attempt to argue that she was transferring assets outside the jurisdiction. The Lawyer says he continued to monitor the situation, in case it eventually became appropriate to reset the Mareva application for hearing. With respect to the CPL, the correspondence in evidence indicates that the Client was supportive of the CPL being registered against one of Ms. Li's properties. Her application to cancel it was granted.
- [223] The Client also complained the Lawyer knew he could not afford to pay the escalating legal fees, but still encouraged him along by telling him to deplete his RRSPs and all his savings and not showing the Client what the actual billed hours or the amount.
- [224] The Lawyer is legally and financially sophisticated. He chose to liquidate RRSPs and apply his savings to this litigation because it was a high priority for him. He continued pursuing his claim despite being well aware that he was not able to keep current with the accruing WIP and that the action was vigorously contested. He was also kept informed of the accruing WIP via delivery of pre-bill reports which had detailed time and disbursement information.

Lawyer's character and standing in the profession

- [225] The Lawyer was called to the BC bar in 1987 and has practiced general litigation in Vancouver continuously for more than 35 years. He initially practiced with Russell & DuMoulin for 5 years, then with Nathanson Schachter & Thompson LLP for 3 years. In September 1994, he started a solo practice, in an office-sharing arrangement. He has appeared as counsel before the Supreme Court of Canada, BC Court of Appeal and this court.
- [226] The Client did not raise any significant issues regarding the Lawyer's character and standing in the profession. He acknowledged he had initially sought out the Lawyer's assistance because he was aware of his litigation experience.

Amount involved

- [227] The Client sought the return of about \$1.2 million, after crediting Ms. Li for the US\$148,000 and certain jewelry she had returned to him. He also claimed a 15% equity interest in LPP. This latter claim was abandoned during closing argument. He also claimed for the value of personal and legal services he had provided.
- [228] Ms. Li and LPP's counterclaim was for US\$148,000 for breach of fiduciary duty and \$40,000 for aggravated and punitive damages.
- [229] The Lawyer emphasized that all parties were seeking special costs from each other. Those were a genuine risk given the Client was claiming in fraud and deceit. He speculated regarding a potential range of costs this could have involved had special costs been awarded against the Client. The defendants did not actually disclose the quantum of their special costs claims. It appears fair to suggest this likely would have been a very substantial sum given the number of lawyers involved on the defendants' side, the number of contested applications and the lengthy trial.

Time reasonably spent

- [230] The Lawyer says the case was hard-fought and required extensive time for chambers applications, short leave applications, discoveries, production and translation of documents, preparation for trial, witness depositions and trial. Total hours recorded exceed 1500, of which 903 hours were billed in the final invoice.
- [231] The Lawyer says he has 14 boxes of documents in storage from this file. This includes a Joint Book of Authorities for closing submissions. This has 105 authorities in 6 volumes, plus a further 5 volumes of supplemental authorities. There were 3 volumes of a common book of trial exhibits with 262 tabs. There were 4 file folders of correspondence. The Client's closing submissions at trial were 181 pages in length for his claim and 49 pages for the counterclaim.
- [232] With regard to the 32 days which the Client specifically identified as involving excessive time spent in a single day (more than 8 hours per day), he says that 22 of those were trial days and balance involved preparation for trial. The Client was kept informed of actual hours that were accumulating through the occasional provision of pre-bill WIP reports. They showed a detailed breakdown of services rendered and time recorded. The Client did not request a more detailed itemization of time spent in individual entries. He denies there were any duplications or double-charges.
- [233] The Client objected to the Lawyer recording time spent to the nearest 0.1 of an hour, suggesting this led to excessive rounding up. The lawyer says this approach to time keeping is standard in the legal profession. He recorded his time conservatively, so rounding up is not an issue. He also noted that in the account he issued for the period during which he was drafting the notice of civil claim and preparing the Mareva injunction application, he

voluntarily reduced his fee in recognition of the fact that he had spent an excessive amount of time on these tasks.

- [234] A general concern I have about the evidence the Lawyer chose to tender in support of his accounts on this review is that it focused primarily on the retainer-related issues between the parties. The Lawyer also bears the onus of proving the reasonableness of the amounts charged to the Client. He did so by tendering the accounts he issued, the related pre-bills showing detailed time spent on each time entry. There was a binder with key pleadings and orders. This included the second further amended notice of civil claim, the second further amended response to civil claim of Ms. Li and LPP, amended response to civil claim of Daqi, amended counterclaim, amended response to counterclaim, 14th amended list of documents of Ms. Li and LPP, 6th amended list of documents of the Client, reasons of Justice Schultes regarding return of privileged documents and sealing order, reasons of Justice Gropper re cancellation of Client's CPL, trial reasons of Justice Adair and costs reasons of Justice Adair, 18 orders made in the Li / LPP action and 1 order from Mr. Rao's action.
- [235] The Lawyer did not tender copies of much in the way of his key work product through the course of the underlying litigation. He did not include earlier versions of pleadings or copies of applications and application responses to show in more detail the factual and legal issues raised in the various applications. He did not include copies of notices to admit or replies to them. There was only a limited amount of correspondence with opposing counsel included. There were no indexes from examinations for discovery transcripts to help show their scope. There were no copies of the indexes for trial binders and authority binders. He did not include copies of opening statements or closing submissions of the parties from trial. A narrative setting out additional detail about significant events during the course of the litigation would have been helpful. He did provide some detailed oral evidence regarding certain aspects of the services provided, such as the initial drafting of pleadings, the correspondence he sent to financial institutions and interactions with their solicitor Mr. Greenberg, and the reasons the Mareva injunction application did not come on for hearing. There was some detail regarding the privileged documents and sealing order applications.
- [236] The final version of the pleadings, formal orders and reasons do help establish the general scope of the issues and services provided, but the more detailed evidence of the types I have enumerated is also important to help establish the scope, complexity and quality of the issues addressed and services provided, particularly in case in which more than \$500,000 in legal fees are in issue.
- [237] For example, knowing the Client was expressly challenging 32 specific days in which more than 8 billable hours had been recorded, one would expect the Lawyer to provide some additional detailed testimony regarding the services performed on those dates. In this case I have the descriptions set out in the final account and a general explanation from the Lawyer that long hours were necessary to prepare for and during trial. I have no doubt that

was the case, but some elaboration would assist with the assessment of whether the time spent and fees charged were reasonable. On May 9, 2019, for example, 12.0 hour is recorded and the Lawyer's description of services is "Trial". He uses the same description for other trial days. This is not helpful. His associate's descriptions for her time provide more detail.

[238] In *Gichuru v. Smith*, 2014 BCCA 414 at para. 114, the court of appeal indicated that simple presentation of a lawyer's bill and together with counsel's submission would not usually allow for an objective determination of the reasonableness of the costs. Work product is a necessary ingredient to assess the objective reasonableness of the bill.

[239] In *Strain & Co. v. Kempling*, 2008 BCSC 1171, District Registrar Bouck, as she then was, commented on the impact a lack of work product has on the registrar's ability to determine a fair fee. At paras. 42-44 and 47:

42 Determination of the reasonableness of the Law Firm's fees is more challenging in this case. The Law Firm chose not to introduce any of its work product into evidence. It is content to rely on its time records and the oral evidence of the work performed.

43 Evidence of the Law Firm's work product is required for a comprehensive consideration of the s. 71(4). In the absence of the work product, the registrar can only make an educated guess as to whether the time charged for such things as drafting affidavits, pleadings and opinion letters is reasonable. The authorities suggest that the registrar should not enter into such guesswork: *Raphael Partners v. Lam* (2001), 55 O.R. (3d) 289 (S.C.J.) at para. 31, appeal allowed on other grounds 218 D.L.R. (4th) 701 (C.A.).

44 Nonetheless, despite this gap in the evidence, I am able to make a determination of some of the s. 71(4) factors.

47 In the absence of the Law Firm's work product, it is difficult to determine whether the time spent throughout was reasonable. The onus is on the Law Firm to demonstrate this reasonableness, and the time records alone are not sufficient to meet this onus. Nonetheless, time spent is only one factor to consider in determining whether the bills are fair; it is not the determining factor: *Diligenti v. McAlpine, Roberts and Poulus* (1978), 9 B.C.L.R. 153 at 157 (C.A.).

[240] In *Mackoff & Co. v. Grewal*, 2015 BCSC 1726 at para. 54, District Registrar Nielsen, as he then was, commented on the same issue:

54 The work product is a necessary ingredient to assess the objective reasonableness of the bill. Absent the legal memorandum there would have been an evidentiary vacuum. Its production provides a certain level of procedural fairness to the client required by natural justice. Without the production of the work product, there is no meaningful opportunity to challenge the reasonableness of the fees charged. In this case, a simple presentation of the lawyer's bill and his/her submissions would not be sufficient. See *Gichuru v Smith* 2014 BCCA 414 at para. 114.

[241] In the present case, I do have some evidence which allows me to make determinations regarding the s. 74 LPA factors, however, the lack of key work product has had an adverse affect on the assessment.

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

[242] The Lawyer says the retainer letter provided for a discounted hourly rate of \$400 for his time, which was a reduction from his normal rate of \$465. At some point during the retainer, his normal hourly rate increased to \$500. He continued to charge the Client the agreed \$400 rate. He charged his articulated students and associates' time at \$100, reduced from the normal \$115 and \$265 respectively. The associate rate was supposed to have been higher, but due to administrative error the rate was not adjusted in the accounting system. The Lawyer opted to maintain the \$100 rate rather than attempt to correct it.

[243] The Client argued that the Lawyer's \$400 hourly rate was not reasonable due to the provision for a bonus. He did not suggest what alternative rate would be more appropriate.

[244] During cross-examination, the Client agreed with the Lawyer that certain of his retainer agreements with his own clients provided for him to charge his time at \$700 per hour. The Client said he charged this fee in matters where he was retained based on him having professional qualifications to practice law in both China and BC. This is a rare skillset.

[245] I find that the Lawyer's discounted rate of \$400 per hour is reasonable considering his many years of experience specializing as a civil litigator. I also find that the rate charged for articulated students and associates is reasonable.

Importance of the matter to the client whose bill is being reviewed

[246] The Lawyer and the Client both agree that this matter was of critical important to the Client.

The result obtained

[247] The Lawyer argues the result obtained was mixed. He acknowledges the outcome of the Client's primary claim was deeply disappointing. He attributes this to the adverse finding regarding the Client's credibility rather than the services provided. With regard to costs, the Lawyer says fending off special costs claims in the circumstances constitutes a significant success.

[248] The Client characterizes the result obtained as "tortured, killing, disastrous and devastating".

[249] I would characterize the result obtained as very poor in relation to the Client's primary claim, good in relation to Ms. Li and LPP's counterclaim and good in the circumstances in relation to costs. I note the Lawyer agreed to a fixed fee of \$2,500 (before tax) to prepare the costs submissions. The Client's primary claim was clearly the largest component of this litigation.

Conclusion re Reasonable Fees

[250] Total fees billed are \$534,671.35. Of that, \$350,000 (65%) are included in the final account.

[251] I have reviewed the accounts and pre-bills in detail. I have concluded that the time spent and fees charged are unreasonable, having consideration for the factors discussed above. The lack of work product evidence is a significant factor. The poor result on the Client's primary claim also warrants some reduction. The Litigation Budget is also a moderating factor.

[252] I assess the reasonable fee for the Lawyer's services in this matter at \$380,000. The Lawyer is entitled to PST (\$26,600) and GST (\$19,000) on this amount.

Disbursements

[253] The Client only took issue with one of the disbursements invoiced, namely 50% of an invoice for Ms. Ho's preparation of the joint book of exhibits for trial. That invoice included not only copy costs, but also a time charge for Ms. Ho's services. The defendants agreed to pay 50% of the copy costs but refused to pay any part of Ms. Ho's fee. The Lawyer wrote this off. The Client objects to paying his 50% share of this invoice. The Lawyer tendered at trial correspondence in which the Lawyer raised the issue of charging Ms. Ho's time for this service, as it was outside the scope of her normal secretarial duties. The Client agreed to this. I allow the Client's 50% share of this invoice.

[254] The Lawyer's invoice dated January 29, 2019 for \$8,195.27 was for interest on outstanding accounts calculated between September 19, 2017 and December 21, 2018. Based on the date range, I assume this includes interest calculated at the 26.8% per annum rate, which I have found does not apply. This portion of the disbursement total is disallowed.

[255] Total disbursements allowed are accordingly \$69,883.09. GST charged on disbursements totals \$2,488.60.

Credit for Payments to Date

[256] The Client has paid \$285,018.83 to date.

Conclusion

[257] To summarize, the Lawyer's accounts are allowed as follows:

Fees

\$380,000.00

Disbursements

\$69,883.09

PST

\$26,600.00

GST

\$21,489.60

Sub-Total

\$497,971.69

Credit - Amount Paid

(\$285,018.83)

Balance Outstanding

\$212,952.86

[258] The Lawyer is entitled to contract interest of 8% per annum, compounded semi-annually on the outstanding balance, commencing January 7, 2023. If the parties are unable to agree on the interest calculation, they may submit their respective calculations in writing via Supreme Court Scheduling.

[259] The parties did not make submissions regarding costs. If they are unable to agree, they may provide written submissions via Supreme Court Scheduling, not to exceed 4 pages.

"Associate Judge Bilawich"

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