

CANADA / JUDGMENT

Mussio Goodman v. Laferriere

2025 BCSC 1999

COURT

Supreme Court of British Columbia

DECIDED

7 July 2025

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2025 BCSC 1999 Mussio Goodman v. Laferriere

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mussio Goodman v. Laferriere,

2025 BCSC 1999

Date: 20250707

Docket: S253212

Registry: Vancouver

Between:

Mussio Goodman

Solicitor

And

Audrey Laferriere

Client

Before: Associate Judge Robertson

(as Registrar)

Oral Reasons for Judgment

In Chambers

Counsel for the Solicitor:

C. Douma

The Client, appearing in person:

A. Laferriere

Place and Date of Hearing:

Vancouver, B.C.

July 7, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 7, 2025

- [1] THE COURT: This is an application for a passing of account under the Legal Profession Act, S.B.C. 1998, c. 9.
- [2] I have made some edits to these reasons as necessary to improve readability, without affecting the substance or final disposition.
- [3] When the matter came on for hearing there was some confusion as to whether it was intended that the attendance would be a further pre-hearing conference (one was conducted on May 14, 2025) or the full assessment. The confusion arose from the clerk's notes from the May 14, 2025 attendance at which this hearing date was set as a "pre-hearing conference."
- [4] Given that (a) an affidavit of justification of had been filed and delivered by the solicitor (b) that the client had filed a responsive affidavit, and (c) that a pre-hearing conference is not required pursuant to AN-8, I proceeded with the assessment rather than compel the parties to return on a separate day. Given the amount in issue (the invoices in issue totalled \$9,538.34), it would not have been proportional or in the interests of justice to adjourn because of what appeared to be a typographical error in the clerk's notes, when the parties were ready to proceed.

Background to Retainer and its Termination

- [5] I am satisfied that the solicitor has established the threshold factor namely, that they were retained and that the terms of the retainer agreement provide that the billing was to be on a time billed basis, as was done, and that upon a termination of the retainer, the fees and disbursements would immediately become due and payable such that the invoices in dispute are final invoices, which were issued more than 30 days prior to the appointment.
- [6] With respect to the retainer agreement, in her affidavit the client specifically deposes: "I signed the retainer agreement."
- [7] The specific terms of the retainer agreement include the following:

In other words, our fees will be billed on the time spent, time X, the hourly billing rate of the persons involved. For example, my hourly rate is \$450. Some services will be done by my legal assistant (S.M.) in my discretion where appropriate at an hourly of \$195. Junior lawyers are at \$275 an hour. This fee does not include my out-of-pocket disbursements, such as court fees, etc., for which you will also be charged.

Once money is paid out of the estate, you will pay my legal fees for service and disbursements as claimed or subject to review by the registrar. If there is a termination of services by either party, the legal fees for services and disbursements are due and owing forthwith.

- [8] The purpose of the retainer was to handle estate matters for the client in respect of the estate of her brother, Rockey Allan Popove. The client sought to be appointed as administrator. A dispute arose early on as to who ought to be the administrator, in particular this client or her sister, who I will refer to as Jenny. I mean no disrespect by using first names, and do so only to avoid confusion given the commonality of surnames.
- [9] Jenny had retained her own counsel, as did a brother in respect of this dispute. There were two other beneficiaries under the estate who were nieces who had not retained counsel.
- [10] It became evident early in the retainer that there would be an opposition to the client's appointment, with the beneficiaries intending to oppose the client's appointment, and approve the appointment of Jenny instead.
- [11] Shortly after the retainer being entered into and the nature of the disputes with the other beneficiaries being considered, the solicitor and the client began to have disagreements in terms of the solicitor's advice specifically primarily as to two main issues:
- a) whether an application for the client to be appointed administrator would be successful, and,
 - b) how to address various issues arising with respect to Jenny's appointment if that were to occur, particularly given allegations by the client that Jenny was in a conflict of interest and other issues which she argued rendered Jenny inappropriate as the administrator. One of the specific areas that gave rise to the client's perception of a conflict of interest was a potential claim that the estate may have had against Jenny for occupation rent given that she was occupying the prior home of the deceased. The client advised the court during this hearing that Jenny has been living in the deceased's house for approximately two and a half years, rent-free, representing a significant potentially asset of the estate. One of the issues that brought the disagreement between the client and solicitor to a head was the circulation of a draft settlement agreement that would have waived any of the estate's entitlement to occupation rent in that respect. The client did not sign it; however, the solicitors were called on to provide advice on it.

- [12] The termination of the solicitor client relationship ultimately occurred after various correspondence and/or emails were sent by the client to opposing counsel directly, leading to requests being made by the solicitors to the client to not communicate directly with opposing counsel given their professional obligations, the effect of which meant that the opposing counsel could not respond.
- [13] Eventually, the client served a notice of application seeking an order to revoke the estate grant that had been granted to Jenny, which the client filed herself without the assistance of counsel, and apparently contrary to their advice.
- [14] On December 6, 2024 the solicitor wrote the client advising that if the application was not withdrawn by the following Monday, they would remove themselves as counsel. That was done and the final account issued.
- [15] The client argues that the lawyer was "constructively dismissed" sometime earlier than that, meaning that there was no entitlement of the solicitor to continue billing after that date, whatever it may be (it was not clear what date the client suggested was the termination date).
- [16] I am aware of no legal authority to establish that there can be a constructive dismissal of a legal retainer. It goes without saying that a lawyer has professional obligations to their client that continue until the solicitor client relationship is formally terminated. The basis on which the termination can occur is one that is governed by the Legal Profession Act, Code of Professional Conduct or the retainer agreement itself. The retainer agreement provides as follows as to termination:

At all times you shall have the right with or without cause to terminate my services on written notice to that effect. I also reserve the same right.

- [17] The client gave no written notice of termination. Even if the retainer agreement did not govern how termination was to be effected, there is insufficient evidence to establish of oral notice of termination or conduct that could possibly be taken as sufficient to end the retainer. I do not accept that there was a constructive termination of the agreement.
- [18] The retainer was not terminated until it was done so by the solicitor in writing on December 6, 2024.

Legal Profession Act Factors

- [19] The onus is on the solicitor to establish that the amounts charged were consistent with the retainer agreement, and that they were reasonable and necessary for the work undertaken, having regard to the factors set out in s. 71 of the Legal Profession Act, as may be applicable to the matter before the Registrar.

The complexity, difficulty or novelty of the issues involved

[20] Here there is nothing particularly complex, difficult or novel, with the one exception being that the client complicated matters by going behind the retainer agreement and communicating directly with the opposing counsel.

The skill, specialized knowledge and responsibility of the lawyer, and character and standing in the profession

[21] The client argues that there is an issue as to the skill of the solicitor in that he, in her view, has set up his practice to be one that was, using the words in her affidavit, "prioritizing volume over quality like a Walmart executive", deposing as follows:

Volume brings more dollars than quality. Assembly line justice where a 2 percent rejection rate is acceptable. I felt I was part of the 2 percent rejection rate. He is also a go-to lawyer by the media. In June 2024 I was asked if I had a lawyer yet. I proudly explained that he was Wes Mussio. The professional said nothing. His silence is now haunting me. Wes has expert experience in estate litigation. He knows how he can forge past due process with abandon. Wes can fast track, "jump the gun", the passing of account stage, knowing nothing of any consequence will happen either to himself or the other lawyers by bypassing it.

[22] That statement, however, acknowledges to some extent that the solicitor, or the solicitor's firm, has expertise with respect to the subject matter and that they do have some good standing in the profession, notwithstanding that the client may not agree with certain things they have read and interpret them in a way that they do not like.

[23] The client did not take the court to any evidence to establish that the solicitor did not have the requisite skill and knowledge to handle this matter. The issues raised by the client are primarily related to her disagreement with the advice given by the solicitor, rather than a dispute that they lacked skill and experience.

Amount Involved

[24] I was not taken to any evidence as to the value of the estate, however I note that whether the client, or Jenny, was an administrator, the entitlement of the client to any share to the estate is not affected by these proceedings. Further, it is notable that the invoices being reviewed are less than \$10,000, collectively.

Time Reasonable spent

[25] Unfortunately, the solicitor did not provide a summary or total, of the time spent by activity which is generally of a great assistance to the court on assessments such as these.

[26] Based on my quick review of the invoices and rudimentary math, it appears that approximately 26 hours was spent on this by the "Senior Laywer", "Junior Lawyer" and "Paralegal" (how much by each was, similarly, not totalled).

- [27] In reviewing the work undertaken by the solicitor, it is notable that no overt step appears to have been taken in any of the estate files, specifically no application prepared or filed, or probate/administration documents prepared or filed.
- [28] Rather, the bulk of the work that was undertaken was in respect of correspondence with counsel for Jenny, and correspondence with the client, whether that be email, letter, or telephone. The time entries for some of these conversations are sometimes larger than would be expected or justified in the descriptions (for example, the entries for Various Dates, Correspondence with client, 1.0 hours, and Correspondence with Opposing Party, .8.
- [29] As to the time billed, the solicitor's evidence was that it is the firm's billing practice that time is docketed as it is performed or within a reasonable period of time thereafter. In the case of Mr. Mussio, the evidence was that he has a paralegal input his time. As such, he records it in a fashion such that it might be docketed a couple of days later when the paralegal then inputs it into the billing system itself.
- [30] The evidence led supported that the time as docketed was the time spent by the relevant timekeeper, consistent with the retainer agreement. There was no contrary evidence led to refute that, although the "various dates" entries are not necessarily consistent with such a billing practice.

Was the time reasonably spent, and was the rate reasonable

- [31] The hourly rate, based on the fees set out in the fee agreement and retainer agreement, are reasonable, those being \$450 for the senior counsel, \$275 for the junior counsel, and \$195 for paralegals. I am satisfied that such rates are reasonable and commensurate with other lawyers who practice in the area of estate litigation.
- [32] In terms of whether the time was reasonably spent, there are some entries that are concerning, as previously noted. In addition, the client has specifically addressed some of these entries in her affidavit. For example, she points to the fact that there are entries for a telephone call with her at 1.3 hours, when she suggests the call was only 3/4 of an hour, and entries where the solicitor is billing for billing.
- [33] However, for the most part, the client simply takes issue with the total amount that she was billed.
- [34] In reviewing the invoices, the majority of the entries are for nominal time blocks, with a significant number being in respect of a .1 or a .2 entry, and primarily in respect of telephone calls and emails between the solicitor and opposing counsel, with corresponding reports to the client. Each communication ultimately comes at a cost to a client, and can easily add up to what, in this case, amounted to close to approximately 26 hours of work.

- [35] The determination for the court is whether the accounts reflect a reasonable amount for the amounts and work undertaken based on the evidence before the court today. I am satisfied that they do for the most part.

Importance of the matter and result obtained

- [36] I have no doubt that the matter was important to the client, and that she is not satisfied as to the results of the retainer, that being that Jenny remains as administrator.
- [37] The client's dissatisfaction appears to be an unfortunate result of her expectations not being met. That is evident in her affidavit, as she states:

My expectation was that Wes would contact [counsel for Jenny] and like magic Jenny would remove her P1, as she was not qualified to be the administrator. I did not know if she was being coerced or not and stood by our agreement that I be administrator and we would become co-administrators if and when she wanted to.

- [38] Clearly, Jenny did not agree to remove herself as administrator. The fact that it did not happen by consent, as the client may have expected, however, is not a basis on which counsel would be dis entitled to the reasonable time spent for, and work expended on behalf of, the client.

Conclusion

- [39] I am prepared to allow the accounts with some adjustments.
- [40] Based on the evidence before the court, it is difficult to mirror each of the line items to the actual work product, particularly given that the entirety of the counsel's file was not fully before the court and that the nature of the work performed was largely in the nature of correspondence, both written and oral.
- [41] I have referenced the few entries that I find unreasonable (for example, the "various dates" and billing for billing entries). Other than those entries, given the nature of this retainer and work undertaken, the entries appear reasonable.
- [42] However, it is also appropriate to review the reasonableness of the fees charged in a global manner, in that the total billed throughout the retainer must reasonably reflect the work necessary for the overall retainer.
- [43] Having regard to the nature of the retainer, the nature of the dispute as to the appropriate administrator for the estate matter, and conduct of the client in communicating directly with opposing counsel, I am satisfied that it is reasonable for senior counsel, junior counsel, and paralegal staff to have spent approximately 26 hours on this matter during the solicitor's retainer, and that the hourly rates as applied are reasonable, subject to some specific time entries, which I would reduce by 2 hours on the basis that the entries are not properly justified.

- [44] I pause to note that no dispute was raised as to the disbursements charged, although those are nominal (\$53 on the one account and \$192 on the other, mostly relating to usual offices expenses such as photocopying / printing).
- [45] I allow the fees and disbursements in the amount of \$8,500, inclusive of taxes.
- [46] That amount reflects a reduction of \$1,038.34 for, as I said, those entries representing conversations without a sufficient description to support the length of time for such conversations, the "various date" entries, and billing for billing, which I estimate ought to be reduced by 2 hours which, assuming the highest applicable rate of \$450 applied to that excessive time (which is not obvious on the entries).
- [47] I will also assess the costs for today's attendance on a summary basis.
- [48] I understand that an offer to settle in the amount of \$7,500 was sent, which was not accepted. The application was less than a half day. You have indicated in your draft certificate of costs that you are seeking costs of today in the amount of \$660. That amount is reasonable for a half day preparation and attendance, particularly given the offer to settle.
- [49] The total certified amount then is \$9,160.

"Associate Judge Robertson"

Sitting as Registrar

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