

CANADA / JUDGMENT

Nirwan Law Corporation v. Nwabuikwu

2022 BCSC 612

COURT

Supreme Court of British Columbia

DECIDED

20 April 2022

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22 BCSC 612 Nirwan Law Corporation v. Nwabuikwu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nirwan Law Corporation v. Nwabuikwu,

2022 BCSC 612

Date: 20220420

Docket: S2012155

Registry: Vancouver

In the Matter of the Legal Professions Act, S.B.C. 1998, c. 9

Between:

Nirwan Law Corporation

Solicitor

And

Christian Ejikemenwa Nwabuikwu

Client

Before: The Honourable Justice Elwood

(Sitting as a Registrar)

Reasons for Decision

Counsel for the Solicitor:

H.S. Nirwan

The Client, appearing in person:

C.E. Nwabuikwu

Place and Dates of Hearing:

Vancouver, B.C.

November 24, 2021

January 20, 2022

March 7 and 14, 2022

Place and Date of Judgment:

Vancouver, B.C.

April 20, 2022

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I. INTRODUCTION

- [1] Christian Nwabuikwu (the "Client") applies by appointment under the Legal Profession Act, S.B.C. 1998, c. 9 ("LPA") to review the bills of Nirwan Law Corporation for legal services provided by Harpreet Nirwan (the "Lawyer") under a contingency fee agreement.
- [2] The Client retained the Lawyer to represent him in personal injury claims arising from two motor vehicle accidents. The Lawyer negotiated a settlement with the defendants' common insurer, the Insurance Corporation of British Columbia ("ICBC"). The Client approved the settlement and signed a release releasing the claims in both actions.
- [3] The total settlement amount, including costs and disbursements, was approximately \$80,000. The Lawyer rendered two bills to the Client totalling approximately \$50,000. The Client received approximately \$30,000 from the settlement.
- [4] The Client raises a number of objections with the bills, including the prosecution of the second action, how the Lawyer calculated the legal fees, certain disbursements and interest charged on the disbursements.
- [5] The Client testified at the hearing. The Lawyer gave his evidence-in-chief by way of affidavit, and the Client cross-examined the Lawyer.
- [6] For the reasons that follow, I have reduced the fees and disbursements the Lawyer is entitled to recover under the contingency fee agreement by \$15,000.

II. BACKGROUND

- [7] The Client was involved in a motor vehicle accident on March 27, 2012. He retained the law firm of Stephens & Holman to represent him in a claim for personal injuries. Stephens & Holman filed a notice of civil claim. On behalf of the defendants, ICBC denied liability for the accident.
- [8] The Client's primary concern was an injury to his right knee and its potential impact on his advanced education and employment prospects. Stephens & Holman investigated the claim, consulted with medical professionals, prepared lists of documents and set a trial date of March 2, 2020.

- [9] In May 2016, ICBC offered approximately \$50,000 to settle the claim. Stephens & Holman rejected the offer on behalf of the Client in July 2016.
- [10] The Client first met with the Lawyer in May 2017. The Client explained that he was dissatisfied with the work by his previous lawyer. On December 21, 2017, the Lawyer and the Client entered into a contingency fee agreement.
- [11] The contingency fee agreement provided, in the part relevant to this review, that if the law firm obtained a recovery for the Client more than 30 days before the scheduled trial date, the Client would pay the law firm 30% of the settlement.
- [12] The Lawyer wrote to Stephens & Holman to request the file material. The letter included an undertaking to pay the reasonable fees of Stephens & Holman from any settlement or damages award.
- [13] The Lawyer reviewed the file, updated the medical and wage loss records, prepared for and attended examinations for discovery of the Client and the defendant driver, and retained and instructed the necessary experts.
- [14] The Lawyer's assessment was that, while there was a basis for liability against the defendants for the 2012 accident, this was a modest non-pecuniary claim. According to the Lawyer: there was no medical evidence clearly linking the Client's knee pain to the accident; the past wage loss claim was relatively minor - primarily lost overtime; and the evidence did not support a claim for future income loss.
- [15] The Client was involved in a second motor vehicle accident on December 19, 2017. The Client retained the Lawyer to act for him in a personal injury action arising the second accident. Although not in evidence, the Lawyer testified that the retainer was based on an identical contingency fee agreement. The Lawyer filed a notice of civil claim. On behalf of the defendants, ICBC denied liability. The Lawyer prepared an application for the two actions to be tried together.
- [16] In relation to the second accident, the biggest challenge, according to the Lawyer, was that ICBC denied there was any collision.
- [17] The Lawyer and the Client attended a mediation on March 21, 2018. The mediation did not result in a settlement.
- [18] On February 28, 2019, ICBC offered \$52,000, "all in", to resolve both claims. The handling adjuster noted there was no evidence of any contact between the vehicles in the second accident, and therefore "no monies will be advanced under this file".
- [19] In early 2020, ICBC made a formal offer to settle both claims for \$51,014.30, plus costs and disbursements.

[20] On January 13, 2020, the Lawyer recommended to the Client that he accept this offer. The Lawyer explained why he thought it was prudent to accept the offer, including the potential consequences in costs if the case proceeded to trial and resulted in a lower award.

[21] The Lawyer and the Client exchanged a number of emails about the settlement offer. One of the Client's requests of the Lawyer was for a breakdown of the disbursements and legal fees. On January 14, 2020, the Lawyer wrote:

The disbursements just go back to me [sic]. Currently, they are approximately \$35,000.

From the settlement amount, you owe 30% which is \$15,304.29 plus 12% tax, or \$17,140.81, leaving you \$33,873.49. You will also receive some provision for costs. I imagine costs would be at least \$7,000. We do not charge fees on costs.

So your total take home would be approximately \$40,000 in your pocket. (emphasis added)

[22] On January 17, 2020, the Lawyer wrote:

I just got off the phone with the ICBC adjuster. She is agreeable to \$7,000 in costs. I will be sending her a Bill of Costs shortly which will set out the costs and disbursements. I have asked her to approve the costs and disbursements before we consider the formal offer further. That way, you will know for sure what dollar figure you are getting. (emphasis added)

[23] The Client responded that afternoon:

You can proceed with the settlement.

[24] On January 20, 2020, the Lawyer wrote to the ICBC adjuster enclosing a draft bill of costs with supporting invoices. The Lawyer advised:

I have instructions to offer the following terms of settlement:

General damages: \$51,014.30

Costs: \$7,392.00

Disbursements: \$35,075.00

[25] The ICBC adjuster agreed to pay costs of \$6,720 and disbursements of \$22,503.12. The primary issue taken by the adjuster with the disbursements was the cost of an expert report by Dr. Vaisler in the amount of \$10,650, which she said was excessive according to BCMA guidelines.

[26] The Client signed a release on January 24, 2020, releasing the defendants in both actions from claims in relation to both accidents.

[27] The Lawyer received settlement funds in the amount of \$80,237.42 from ICBC on January 29, 2020, and deposited the funds in a trust account.

- [28] The Lawyer then began corresponding with Stephens & Holman regarding their fees. He encountered unexpected difficulty reaching an agreement. Eventually, counsel resolved the fee split; but the dispute delayed any payment to the Client. Based on the position taken by Stephens & Holman, the Lawyer did not feel comfortable releasing any settlement funds until the fee dispute was resolved.
- [29] As matters dragged on, the Client became increasingly frustrated. In early March, 2020, he wrote the Lawyer that he would be taking steps to move matters forward, including writing to ICBC directly and initiating a complaint to the Law Society. The Lawyer agreed to issue his statement of account and a cheque for the settlement proceeds from his general account.
- [30] The Lawyer delivered two invoices, dated January 29 and February 3, 2020, and a cheque, dated March 11, 2020, in the amount of \$29,688.90.
- [31] The invoices are very difficult to understand.
- [32] The January 29 invoice references the first accident. The original version of the invoice purports to bill a 33.3% contingency fee of \$1,709.32, and disbursements of \$33,592.02. The total including taxes was \$36,900.06.
- [33] The February 3 invoice references the second accident. It purports to bill contingency fees "as per agreement" of \$10,000, and disbursements of \$1,866.56. The total, including taxes, was \$13,648.46.
- [34] The total of both invoices combined was \$50,548.52.
- [35] The Lawyer and the Client met in person on March 13, 2020, to discuss the invoices. The Lawyer deposes that he explained the invoices in detail and showed the Client the disbursement receipts to support each charge. The Client denies that the Lawyer explained the invoices in a meaningful way.
- [36] The Lawyer deposes that he offered to reduce his fee and waive the interest charge on the disbursements. The Lawyer made handwritten changes to the invoices and presented them to the Client. He deposes that the Client refused to accept the proposed changes.
- [37] Following the meeting, the parties exchanged a number of emails in which the Client posed further questions about the settlement and the legal fees. The Lawyer attempted to respond to all of the Client's questions, but seemed unable to assuage his concerns.
- [38] Ultimately, the Lawyer wrote to the Client on April 27, 2020, enclosing the two invoices with handwritten changes and a cheque in the amount of \$6,722.84.
- [39] On the January 29 invoice, the Lawyer stroked out the 33.3% contingency fee and reduced it to 24%, but did not change the amount billed. On the February 3 invoice, he wrote in 30% and changed the amount billed to \$7,944.08. The Lawyer also stroked out "Interest Income" (actually, interest charges) and a "File Management Fee" on both invoices.

- [40] The revised invoice totals were \$33,031.06 and \$10,794.62, respectively, for a total of \$43,825.68.
- [41] The Lawyer deposes that the cheque for \$6,722.84 represented a proffered discount to the Client for the difference between the original invoices and the invoices with handwritten changes.
- [42] The Client wrote back that day stating that he would be referring the matter to the Law Society, the Supreme Court of British Columbia and the media. Further unproductive correspondence from the Client followed. The Client subsequently filed a complaint with the Law Society. Following an investigation, the complaint was dismissed.
- [43] Eventually, the client attempted to cash the cheque for \$6,722.84. The cheque was not honoured by the bank because the account on which it was drawn was closed. The Lawyer testified that, having been put through the time and expense of a Law Society investigation, he had withdrawn his offer to reduce the fees and charges.
- [44] The Client filed an appointment on November 17, 2020, seeking a review of the Lawyer's bills. The Lawyer raised an objection on grounds the Client had failed to apply for a review within three months of payment as required by s. 70(1)(b) of the LPA.
- [45] On April 20, 2021, Master Muir made an order extending the time required for the Client to file an appointment to review the Lawyer's bills (presumably having found, pursuant to s. 70(11), special circumstances to justify a review and order that the bills be reviewed by a registrar).

III. ANALYSIS

A. Contingency Fee Review under ss. 71-78 of the LPA

- [46] The statutory authority for both an examination of any agreement with respect to legal fees and disbursements, including a contingency fee agreement, and a review of a lawyer's bills, including those delivered pursuant to a contingency fee agreement, is found in Part 8 of the LPA.
- [47] Section 68(2) of the LPA provides that a person who has entered into an agreement with a lawyer or a law firm may apply to have the agreement examined by a registrar of the court.
- [48] Section 68(5) provides that the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances at the time the agreement was entered into.

- [49] In *Mide-Wilson v. Hungerford Tomy Lawrenson and Nichols*, 2013 BCCA 559 [Mide-Wilson], the Court of Appeal confirmed a two-step process for reviewing contingency fee agreements. First, the registrar must determine whether the agreement was fair when it was made. Second, the registrar must determine whether the agreement was reasonable with respect to the ultimate fee charged, based on the circumstances from the time the agreement was made until its termination or completion.
- [50] I do not understand the Client in this case to be challenging the contingency fee agreement itself. Rather, his objections arise from the invoices and the manner in which the Lawyer handled certain aspects of the solicitor-client relationship and the calculation of legal fees.
- [51] In any event, there is no evidence, in my view, the contingency fee agreement itself was unfair or unreasonable, either under the circumstances when the Client first retained the Lawyer, or in the result. Accordingly, I must confirm the agreement.
- [52] Even where a contingency fee agreement is confirmed, the bills issued by a lawyer pursuant to the agreement are still subject to review under ss. 71-78 of the LPA, which involves consideration by the registrar of the reasonableness of the fees and disbursements charged based on a broad range of factors, including those set out in s. 71(4) of the LPA. The registrar may also consider Law Society Rule 8-1(2), which provides that a bill rendered under a contingency fee agreement must be reasonable in the circumstances existing at the time the bill was prepared.
- [53] Section 71(5) of the LPA states that the registrar's discretion is not limited by the terms of any agreement.
- [54] In *Mide-Wilson*, the Court of Appeal held that, while the amount payable under a contingency fee agreement constitutes the starting point for any review of the reasonableness of the lawyer's bill, the registrar's task is to consider reasonableness in its full context, including the factors set out in the LPA.
- [55] The overarching consideration is the duty of utmost good faith on the part of a lawyer in the solicitor-client relationship: see, for example, Registrar Nielsen's decision in *Radic v. Bosch*, 2019 BCSC 602, reducing the fee charged under a contingency fee agreement.

B. The Client's Objections to the Lawyer's Bills

- [56] The Client raises a number of objections to the Lawyer's bills. I have reformulated those objections, as I understand them, in no particular order:
- a) "failure to prosecute" the action arising from the second accident;
 - b) settlement funds "apportioned to the second accident", when the Lawyer maintains there is no evidence the second accident occurred;

- c) "lack of full and true financial disclosure" in the Lawyer's breakdown of the settlement amount and legal fees;
- d) "extravagant expenditures" incurred on behalf of the Client without prior estimates or consultation; and
- e) interest charged by the Lawyer on the disbursements.

[57] The Lawyer defends the bills based the factors set out in s. 71(4) of the LPA.

[58] I will address the Client's specific objections first. I will do so with s. 71(4) of the LPA and Law Society Rule 8-1(2) in mind.

i. Failure to Prosecute the Second Action

[59] The Client notes, correctly, that most of the work by the Lawyer and all of his negotiations with ICBC occurred within the context of the action arising from the first accident.

[60] The Lawyer's focus on the first action was an exercise of professional judgement. In the Lawyer's opinion, it was unlikely the Client could establish liability for the second accident. There is no evidence on which I could question the Lawyer's assessment of the merits of the second action.

[61] The Client's perception that the Lawyer failed to prosecute the second action was, in my respectful view, largely a misunderstanding of the Lawyer's legal advice. It was not that the Lawyer himself denied the second accident occurred. Rather, in light of ICBC's firm denial of any contact between the vehicles in the second accident, the Lawyer focussed on the first accident, where there was a basis for liability, and negotiated a global settlement based on liability for the first accident.

[62] I find that the Client was aware liability was a serious challenge in the second action. He knew that ICBC denied the second accident occurred. The Lawyer forwarded email correspondence from the handling adjuster setting out this position. In addition, the adjuster said to all in attendance at the mediation, including the Client, that ICBC denied a collision had occurred. I accept the Lawyer's evidence that he explained the challenge obtaining any recovery in the second action.

[63] Further, I find that the Client knowingly released his claims in both actions in exchange for a payment in the first action only. All of the relevant correspondence referred to a settlement of both actions. The release that the Client signed clearly identified both accidents and both actions.

[64] In short, I conclude that the Lawyer's handling of the second action does not justify a reduction of his fee.

ii. Settlement Funds Apportioned to the Second Accident

[65] As stated, the Lawyer's invoices are difficult to understand. As I understand them, based on his explanation in court, the Lawyer calculated the legal fees as follows:

- a) He took the total settlement amount of \$80,237.42 and divided it in two, allocating \$40,118.17 to each action.
- b) He deducted from these two gross amounts the disbursements attributable to each action for filing fees, transcripts, expert reports, etc.
- c) He then deducted the costs paid by ICBC in the first action from the settlement amount allocated to the second action.

(As the Lawyer explained it, the reason he deducted the costs in the second action, although they were paid in the first action, is that, after disbursements were deducted in the first action, there were not enough settlement funds remaining to give the Client credit in that action for the costs paid by ICBC.)

- d) These calculations yielded net amounts of \$5,132.55 in the first action and \$31,433.12 in the second action.
- e) The Lawyer calculated the legal fees based on the contingency fee agreement using the net amounts allocated to each action.

[66] The Lawyer billed \$10,000 in fees for the second action. It is beyond me how he arrived at this amount. Accepting for the moment the allocation of settlement funds to the second action, the fees based on 30% of the net allocation to that action should have been \$9,429.93.

[67] \$10,000 is 32% of the net allocation to the second action.

[68] The Lawyer billed \$1,709.32 in fees for the first action, which is 33.3% of the net allocation to the first action.

[69] The contingency fee agreement does not authorize legal fees of 32% or 33.3%. The agreement provides:

3.1 The Client will pay for the Firm's legal services rendered under this agreement and the Legal Fee will be calculated as follows:

- (a) where Recovery is obtained or secured before the action is commenced, 25% of the Recovery; or
- (b) where Recovery is obtained or secured after the action is commenced, but more than 30 days before the date on which the action is initially set for trial, 30% of the Recovery;
- (c) where Recovery is obtained or secured after the date that is 30 days before the date on which the action is initially set for trial, or during or after the trial, but before any appeal is filed by any party, 33.3% of the Recovery;

As the case may be.

- [70] The settlement was secured by January 24, 2020 (when the Client signed the release) or, at the latest, January 29, 2020 (when the Lawyer received the settlement funds). The trial date was March 2, 2020. Even using the later date in January, the settlement was secured 31 days before the scheduled trial date. The contingency fee should have been 30%.
- [71] There is also merit in the Client's complaint that there should have been no fees attributed to the second action. The contingency fee agreement provides:
- 3.2 In the event there is no Recovery, then the Client is not indebted to the Firm for any Legal Fee.
- [72] From the Client's perspective, there was no recovery in the second action. I agree. ICBC was clear there were no monies paid for the second accident. Damages, costs and disbursements were all paid by ICBC in the first action.
- [73] In my view, the Lawyer's allocation of 50% of the settlement funds to the second action was arbitrary and illogical, designed primary to ensure that his firm recovered all of its disbursements in both actions.
- [74] The correct approach was to allocate all of the settlement funds to the first action, deduct the costs paid by ICBC in the first action, deduct the disbursements attributable to the first action, and then calculate a 30% contingency fee accordingly.
- [75] While the legal fees may have been substantially the same had the Lawyer calculated the contingency fee in this way, part of the Lawyer's duty to his client, for which he is compensated under the contingency fee agreement, is to fully explain the invoices before taking his fee.
- [76] The Lawyer did not adequately explain his calculations to the Client. The Client was understandably confused why the Lawyer invoiced legal fees and disbursements in the second action.
- [77] The contingency fee agreement did not authorize the Lawyer to recover the disbursements in the second action. The contingency fee agreement provides:

4.1 The Client will pay and reimburse the Firm for any and all Disbursements from the settlement or judgement obtained in the matter. (emphasis added)

- [78] There were no settlement monies obtained in the second action. I see no basis for the Lawyer to recover disbursements in the second action from the Client.
- [79] I will return to these points in the conclusion section below.

iii. Lack of Full and True Financial Disclosure

- [80] The Client argues that the Lawyer failed to disclose the basis of the settlement before the Client accepted the offer. The Client notes he only obtained a full breakdown (into general damages, special damages, past wage loss, costs and disbursements) from ICBC directly on May 28, 2020, many months after the case settled.

- [81] In my view, the Lawyer made many reasonable efforts to explain the settlement to the Client before he accepted the offer. The Lawyer set out the basis of his recommendation to accept the offer. He replied to every reasonable email from the Client, and answered every reasonable question.
- [82] While he did not break it down into the various heads of damages, the Lawyer explained the offer sufficiently for the Client to understand the basis of the proposed settlement.
- [83] The Lawyer explained that the offer was \$51,014.30 plus costs and disbursements. He estimated the costs would be \$7,000, which was roughly accurate. The Lawyer seemed to expect ICBC would fully cover the disbursements, which was incorrect. However, the Lawyer also suggested that the Client wait for ICBC to approve the costs and disbursements before he and the Lawyer considered the offer further.
- [84] The Client would have known at the time he approved the final settlement amount that ICBC had refused to cover approximately \$12,500 of the \$35,000 in disbursements. Otherwise, the Lawyer's estimate of \$40,000 being what the Client would "take home" was roughly accurate.
- [85] Accordingly - and although he created unacceptable confusion with the subsequent invoices - the Lawyer adequately disclosed the terms of the settlement offer and expected net recovery for the Client to make an informed decision.
- [86] It is unclear whether the Lawyer disclosed how much he agreed to pay Stephens & Holman. The Lawyer informed me he paid Stephens & Holman approximately \$4,400 from the fees he billed the Client. However, he could not recall whether he shared this information with the Client.
- [87] In my view, it was not necessary for the Lawyer to disclose the fee split with Stephens & Holman. From the Client's perspective, the necessary information to inform his decision-making was to know approximately how much he would owe in legal fees overall. The Lawyer provided this information.
- [88] However, the Lawyer ought not to have made the Client wait while the Lawyer resolved the relatively minor fee dispute with Stephens & Holman.
- [89] Although I have concerns with the way in which the Lawyer prepared and presented the invoices, I find no merit in the Client's allegations the Lawyer acted unethically or unprofessionally.

iv. Extravagant Expenditures on Behalf of the Client

- [90] The Client disputes a number of the disbursements in the bills.
- [91] The contingency fee agreement provides:

2.2 The Firm in its discretion employ the services of those investigators or experts as the Firm deems reasonable, necessary or expedient for the purpose of the pursuit of the claims on those terms and conditions as the Firms reasonable, necessary or expedient including a contingency fee basis.

[92] Section 71(2) of the LPA provides that the registrar must allow:

- (a) those [charges or disbursements] reasonably necessary and proper to conduct the proceeding or business to which they relate; [and]
- (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.

[93] The Client argues that he was not consulted on, and did not approve, a number of the large disbursements. Prior consultation was not required. Neither the agreement, nor the LPA required prior approval by the Client, so long as the disbursements were reasonably necessary and proper to conduct the litigation.

[94] The Client disputes an invoice of \$11,182.50 from Bridgepoint and a medical file review fee from Dr. Vaisler of \$250.

[95] The Bridgepoint invoice relates to a medical report by Dr. Vaisler, who provided an expert opinion on the Client's soft tissue injuries. Dr. Vaisler invoiced Bridgepoint \$10,650. Bridgepoint provided disbursement financing by paying Dr. Vaisler's invoice pending resolution of the claim. ICBC agreed to pay about one half of the underlying invoice from Dr. Vaisler. The Lawyer billed the Client the full amount of the Bridgepoint invoice.

[96] A report from Dr. Vaisler was reasonably necessary to establish causation and damages. I do not agree with the Client that the Lawyer was required to negotiate a fixed fee with the doctor before requesting the report. Nor do I agree the report was an unreasonable expense because the doctor could not establish a connection between the accident and the Client's knee pain.

[97] However, the cost of the report seems unreasonably high for what appears to have been a straight forward medical legal opinion. ICBC would only agree to cover half of the cost. The Lawyer offered no answer to ICBC's refusal to cover the full cost of the report. I would likewise disallow half of the Bridgepoint invoice and Dr. Vaisler's file review fee.

[98] Second, the Client disputes an invoice from Synoptic Medical of \$2,650. This invoice was for a report by Mr. Russell. The report, which is not in evidence, appears to have been in relation to a future wage loss claim.

[99] The Client also disputes an invoice from RSM of \$8,814. This invoice appears to be in relation to a report by an economist on a future wage loss claim, also not in evidence.

[100] The Lawyer did not provide any explanation for why a report by Mr. Russell or an economist was reasonably necessary in this case. The Lawyer testified there was no basis for a viable future wage loss claim. ICBC did not include future wage loss in any settlement offer. Without a viable future wage loss claim, it is unclear why the Lawyer retained these experts.

[101] However, at least some of the cost of these reports appears to have been covered by ICBC. I should not disallow disbursements that ICBC approved.

[102] A precise calculation of the disbursements I should disallow is not possible. Taking into consideration all of the above, I would reduce the disbursements in the first action to \$25,000.

[103] As stated, I would disallow the \$1,866.56 in disbursements and associated taxes in the second action.

v. Interest Charged on Disbursements

[104] The Client objects to paying interest on the disbursements.

[105] The contingency fee agreement provides:

4.2 The Disbursements will incur a carrying cost of 12% per annum.

[106] Some interest charges must be allowed based on the agreement. However, there should be no interest on the disbursements I have disallowed.

[107] In addition, there should be no interest on the half of the Bridgepoint invoice I have allowed. As I understand it, the Bridgepoint invoice includes a financing charge. The Client should not be charged interest on top the Bridgepoint financing.

[108] It is difficult to estimate a proper amount of interest on the remaining disbursements. I would reduce the interest charges to \$1,500.

C. Section 71(4) of the LPA - Fee Review Factors

[109] I turn now to the Lawyer's submissions based on the factors set out in s. 71(4) of the LPA.

i. Complexity, Difficulty or Novelty

[110] In my view, the proceedings in which the Lawyer acted for the Client were relatively straight forward personal injury claims.

[111] ICBC denied liability in both actions. An examination of the defendant was necessary before ICBC would acknowledge exposure, even in the first action. Causation and damages were also a challenge, given the lack of clear medical or employment documentation. However, the issues were not complex, difficult or novel.

[112] On the other hand, I agree with the Lawyer that there was material risk in both actions that a trial could result in a dismissal of all claims or damages below the amount offered by ICBC to settle the claims.

ii. Skill, Specialized Knowledge and Responsibility

[113] This case required a lawyer with litigation experience in personal injury claims and in negotiating with ICBC.

[114] The Lawyer has practiced law for approximately 12 years. He conducts approximately two trials per year. In my view, he possessed the necessary skill and experience to prepare the cases, gauge the risks, negotiate with ICBC and the advise the Client appropriately.

iii. Character and Standing in the Profession

[115] The Lawyer's character and standing in the profession are neutral factors. There is no evidence the Lawyer is lacking in either regard.

iv. The Amount Involved

[116] This matter involved a modest amount of money.

v. Time Reasonably Spent

[117] The Lawyer was retained in late 2017. The case settled in early 2000. During the time he acted for the Client, the Lawyer collected and disclosed medical and wage loss records, prepared for and attended examinations for discovery, retained and instructed experts, reviewed the reports, prepared an application for the two actions to be tried together, attended a mediation, negotiated a settlement with ICBC and prepared a draft bill of costs.

[118] I was not provided with the actual time the Lawyer spent on this file. However, in general terms, subject to the comments in these reasons, I am satisfied that a 30% contingency fee is reasonable compensation for the time the Lawyer spent and the risk he assumed.

vi. Hourly Rate

[119] I was not provided with information on the Lawyer's normal hourly rate.

vii. The Importance of the Matter to the Client

[120] This matter was very important to the Client.

viii. The Result Obtained

[121] The Lawyer obtained a reasonable settlement for the Client.

[122] I have no basis on which to doubt the lawyer's advice the Client should accept the settlement offer. The offer appears to have been within the range of possible outcomes based on the evidence. A settlement removed the risk of a dismissal or a lesser recovery at trial, with the associated adverse consequences to the Client in costs.

[123] The total settlement amount of approximately \$80,000 was higher than the "all in" offer of \$50,000 from ICBC while the Client was with Stephens & Holman.

[124] Although the Client may feel disappointed with the result, it was a reasonable outcome in the circumstances that existed when he accepted the settlement offer.

D. Conclusions on the Fee Review

[125] For the reasons set out above, I would disallow fees and disbursements in the Lawyer's bills dated January 29 and February 3, 2020, on the following grounds:

- a) the agreed contingency fee was 30%, not 32% or 33.3%;
- b) all of the fees should have been billed in the first action;
- c) there should have been no disbursements billed for the second action;
- d) the invoices are unacceptably difficult to understand; the Lawyer's calculations were not properly explained to the Client;
- e) the Client should not have been made to wait while the Lawyer negotiated a fee split with Stephens & Holman;
- f) the disbursements are reduced to \$25,000, inclusive of taxes; and
- g) the interest charges are reduced to \$1,500.

[126] Otherwise, the fees and disbursements billed by the Lawyer were reasonably necessary and proper to conduct the proceedings for which he was retained.

[127] These conclusions do not permit a precise calculation. Having taken into consideration all of the circumstances, I find that the Lawyer's bills should be reduced by \$15,000 overall.

E. Costs

[128] Pursuant to s. 72(1)(a) of the LPA, because the Lawyer's bill has been reduced by more than one-sixth, the Client is entitled to the costs of the review, unless there are "special circumstances" pursuant to s. 72(2).

[129] No special circumstances were brought to my attention to depart from this usual rule on costs, and none are apparent. However, if special circumstances exist of which I am unaware, an appointment may be taken out within 15 days of these reasons to address the issue. Otherwise, the Client will have the costs of the review.

[130] Pursuant to s 73(2)(b) of the LPA, the registrar may summarily determine the costs of a review. This review occupied three two-hour hearings and an interim application to address the Lawyer's limitation defence.

[131] Subject to an appointment being filed within 15 days of these reasons, the Client's costs are summarily assessed at \$3,000, which is inclusive of taxes and disbursements.

IV. CONCLUSION

[132] The fees and disbursements the Lawyer is entitled to recover under the contingency fee agreement are reduced by \$15,000 overall, to \$35,548.52, inclusive of taxes.

[133] Subject to the provisos noted above, the Client is entitled to costs of this review in the amount of \$3,000, inclusive of taxes and disbursements.

[134] If a certificate is required, one may be submitted through the registry for my signature.

"Elwood J."

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