

CANADA / JUDGMENT

Parmar v. Mir Huculak Law Office

2023 BCSC 1087

COURT

Supreme Court of British Columbia

DECIDED

23 June 2023

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2023 BCSC 1087 Parmar v. Mir Huculak Law Office

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Parmar v. Mir Huculak Law Office,

2023 BCSC 1087

Date: 20230623

Docket: S219887

Registry: Vancouver

Between:

Neelam Parmar

Client

And

Mir Huculak Law Office

Law Firm

- and -

Docket: S2110847

Registry: Vancouver

Between:

Neelam Parmar

Client

And

Milan Uzelac Law Offices Personal Law Corporation

Law Firm

Before: Registrar Gaily

Reasons for Decision

Counsel for the Client:

J. Fiddick

Counsel for the Solicitor, Mir Huculak Law Office:

M.I. Huculak

Counsel for the Solicitor, Milan Uzelac Law Offices:

M. Uzelac

Place and Dates of Hearing:

New Westminster, B.C.

March 30 and 31, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 23, 2023

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Introduction

- [1] Neelam Parmar (the "Client") seeks a review under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA] of the bills issued to her by two lawyers, Milan Uzelac of Milan Uzelac Law Offices Personal Law Corporation, and Mir Huculak of Mir Huculak Law Office (together, the "Lawyers").
- [2] In an order pronounced October 18, 2022, Master Bilawich ordered that these reviews be heard together for two days. He also ordered the Lawyers to file their first and/or supplementary affidavits of justification by November 30, 2022, and the Client to provide her affidavit in response by January 27, 2023.
- [3] The evidence before me included the second affidavit of Mr. Uzelac, sworn November 29, 2022 ("Uzelac Affidavit"), and the second affidavit of Mr. Huculak, sworn November 2, 2022 ("Huculak Affidavit"), as well as the Client's affidavit, sworn January 23, 2023 ("Client's Affidavit"). The Client was represented by John Fiddick throughout these review proceedings; the Lawyers represented themselves. The Lawyers and the Client were cross-examined on their affidavits. The Lawyers both testified that they were unable to locate the Client's files for the purposes of this review. In many instances, materials referred to by the Lawyers to justify their fees, such as pleadings and affidavits, were not exhibited to the Lawyers' affidavits and were obtained from the court file or were tendered at the hearing.
- [4] The Client retained Mr. Uzelac in January 2019 to represent her on various matters, including an LPA review of the fees charged by her former family lawyer. The Client's retainer ended by November 12, 2021, when she filed a notice of intention to act in person in place of Mr. Uzelac. The only bill Mr. Uzelac rendered to the Client is dated November 29, 2020, but it was prepared and provided to the Client on November 29, 2021 (the "Uzelac Bill"). The Uzelac Bill is the subject of the review in Vancouver file S-2110947, which the Client filed on December 10, 2021.

- [5] Mr. Uzelac admits that he prepared the accounts on which the Uzelac Bill is based (the "Uzelac Accounts") over a weekend in late November 2021, pursuant to the order of Master Robertson (Uzelac Affidavit, paras. 16 and 17). On the Uzelac Bill, Mr. Uzelac initially claimed fees of \$103,384.54 (including taxes and disbursements), less \$4,600 paid from trust, leaving a balance of \$98,784.54 owing. During the hearing, Mr. Uzelac produced a "revised statement of account", reducing the fees he claims the Client owes him to \$86,575.74.
- [6] From January 1 through April 30, 2021, Mr. Uzelac referred his clients to Mr. Huculak, who was the custodian of his legal practice while Mr. Uzelac served a four-month suspension from practice. Mr. Huculak's bill to the Client is dated August 11, 2021 (the "Huculak Bill") and is the subject of the review in Vancouver file S-219887, which the Client filed on November 12, 2021. Mr. Huculak charged the Client a total of \$9,856.00 (including disbursements and taxes) for services rendered from January 1 to May 31, 2021.
- [7] As I discuss below, in the circumstances of this case, I have determined that the Client is entitled to a substantial reduction in the fees the Lawyers charged.
- [8] I have reduced Mr. Huculak's fees to a total of \$5,600 (including taxes). I have reduced Mr. Uzelac's fees to a total of \$20,000 (including taxes), from which the amount of \$12,600 (the amount I find the Client has already paid him), is to be deducted. The Client is entitled to her costs of the review under s. 72 of the LPA.

Background and Summary of the Retainers

- [9] The Client is involved in an acrimonious family proceeding, which was commenced by her former husband, Nidhan Rikhia, and has been before the court since 2014 (the "Family Proceedings"). I will summarize only the background and the Family Proceedings relevant to this LPA review.
- [10] The Client was the sole registered owner of what had been the family home (the "Home"). In September 2016, the Director of Maintenance Enforcement, Family Maintenance Enforcement Program ("FMEP"), registered a notice of a maintenance order against the Home, pursuant to s. 26 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 (the "FMEP Charge").
- [11] In 2017, the Client retained Kevin Groves, then with the firm Lessing Brandon & Company LLP, now Fleetwood Family Law (the "Groves Firm"), to represent her in the Family Proceedings. Both the Client and Mr. Rikhia named each other's parents (among others) as respondents in the Family Proceedings. In a consent order pronounced on October 23, 2017, Justice Harvey ordered the Client's father to pay \$275,000 to the Client and Mr. Rikhia, on the dates and in the amounts set out in the order (the "Harvey Order"). The Harvey Order provides that all the payments to the Client are to be made to the Groves Firm in trust.

- [12] In the summer of 2018, Mr. Groves represented the Client in a 15-day trial before Justice Fleming. In reasons released December 28, 2018 (indexed at 2018 BCSC 2318), Fleming J. dismissed the Client's claims for spousal support and an unequal division of the family property, and ordered the Client to pay Mr. Rikhia arrears in basic child support and s. 7 expenses, as well as to pay him prospective basic child support and s. 7 expenses. She also ordered the parties to participate in the "Family Forward Reunification Program" of Alyson Jones and Associates ("FFRP"). Justice Fleming awarded Mr. Rikhia his costs of the trial.
- [13] On January 4, 2019, Mr. Groves filed an appointment pursuant to the LPA to review the bill he had issued to the Client on December 31, 2018 (the "Groves LPA Review"). Mr. Groves's bill shows a balance owing on the Client's account of \$125,374.55, for services provided from August 2017 through August 2018.
- [14] The Client attests that she was "dissatisfied with the services provided, the result obtained and the legal accounts issued by Mr. Groves" (Client's Affidavit, para. 3). She attests that on the recommendation of a family friend, in January 2019, she and her parents met with Mr. Uzelac and retained him to represent her on the following four matters: the Groves LPA Review; entering the final order of Fleming J.; the assessment of Mr. Rikhia's costs of the trial; and dealing with the terms of the Harvey Order (Client's Affidavit, para. 4).
- [15] The Client and Mr. Uzelac agree that they never entered into a written retainer agreement regarding Mr. Uzelac's services. The retainer was not a contingent fee agreement. Mr. Uzelac testified that he did not maintain contemporaneous time records during the retainer.
- [16] Although Mr. Groves had commenced the Groves LPA Review, on January 29, 2019, the Client filed her own appointment in the Groves LPA Review, returnable March 25, 2019 (Client's Affidavit, para. 9, Ex. C). As reflected in the order of Registrar Nielsen (as he then was) made February 4, 2019 at the pre-hearing conference ("PHC") in the Groves LPA Review, Mr. Uzelac appeared at the PHC for the Client. On March 14, 2019, Mr. Groves filed a requisition setting the Groves LPA Review for a two-day hearing beginning July 16, 2019.
- [17] On April 25, 2019, Mr. Rikhia filed an application returnable May 10, 2019 to be heard by Fleming J., seeking various orders, including a restraining order preventing the Client from disposing of the Home, and an order compelling the Client to post "between \$50,000 to \$75,000 as security for costs, future child support and section 7 expenses".
- [18] Mr. Uzelac filed the Client's response to Mr. Rikhia's application on May 3, 2019, together with the affidavit of Natalie Stewart-Ewan, Mr. Uzelac's legal assistant, made May 3, 2019 (Client's Affidavit, para. 12, Ex. F, pp. 58-69). Paragraph 3 of Part 4 of the Client's response seeks an adjournment of Mr. Rikhia's application, stating the following:

Due to the medical condition of the Respondent [the Client], to wit: Post Traumatic Stress Disorder, she is currently unable to properly instruct counsel in the within proceeding and, as such the application should be adjourned for a reasonable time for her to obtain medical clearance.

(Client's Affidavit, Ex. F, p. 59)

- [19] On April 26, 2019, counsel for FMEP filed an application in the Family Proceedings, also returnable May 10, 2019 (the "FMEP Application"). The FMEP Application sought orders relating to funds of \$23,353.88, which the Insurance Corporation of B.C. ("ICBC") had paid to FMEP on February 7, 2019 (the "ICBC Funds"). The FMEP also sought orders that it hold the ICBC Funds as security for support owing to Mr. Rikhia by the Client, and that FMEP payout from the ICBC Funds support arrears owing by the Client to Mr. Rikhia. There was no response to the FMEP Application filed by the Client in the court file.
- [20] The orders pronounced by Fleming J. on May 10, 2019 reflect that Mr. Uzelac appeared on the Client's behalf at the applications before her. Justice Fleming did not adjourn the applications of Mr. Rikhia and FMEP, but she granted the orders sought by FMEP in its application (Huculak Affidavit, Ex. D, pp. 43-44). With respect to Mr. Rikhia's application, Fleming J. ordered that the Client was restrained from disposing of the Home, pending payment of the costs ordered in the trial, Mr. Rikhia's written consent, or further order of the Court (the "Restraining Order"). However, Fleming J. dismissed or adjourned the other orders Mr. Rikhia sought.
- [21] In the context of the Groves LPA Review, on July 12, 2019, Mr. Uzelac filed the affidavits of the Client's psychiatrist, Dr. Jatinder Sandhu, sworn July 8, 2019 (Client's Affidavit, Ex. G, pp. 70-76), and of Ms. Stewart-Ewan made July 12, 2019 (Client's Affidavit, Ex. G, pp. 77-101).
- [22] The Groves LPA Review was set for July 16, 2019 and the order of Registrar Nielsen made that same day reflects that Mr. Uzelac appeared for the Client. Registrar Nielsen ordered the Groves LPA Review adjourned, but ordered that Mr. Groves may apply the \$66,244.86 held in the Groves Firm trust account "against invoice #5635 on the following conditions: a. it is without prejudice to the Client's right to seek indemnity for all invoices rendered by the Solicitor; and b. The Solicitor shall reimburse the Client any outstanding amount if the balance found by the Honourable Court at any subsequent hearing in this matter is less than \$66,244.86."
- [23] No further steps were taken in the Groves LPA Review until after the retainers ended. The Client's evidence is that through the document disclosure related to this hearing, she learned that on September 21, 2020, Amber Reid of Mr. Uzelac's office picked up boxes containing her file from the Groves Law Firm, but she has never received these materials from Mr. Uzelac and Mr. Uzelac says he no longer has the files (Client's Affidavit, para. 20). At the hearing, the Client tendered as an exhibit a letter from the Groves Firm to her dated September 21, 2020 regarding her file, which indicates "picked up by Milan Uzelac" and is signed by Ms. Reid (Ex. 1). At the hearing, Mr. Uzelac maintained that he had returned the Groves Firm documents to the Client and that he no longer has them.
- [24] The Client confirmed that she owed money to the Bank of Nova Scotia ("BNS") and that in November 2019, she instructed Mr. Uzelac to respond to a demand letter sent to her by BNS (Client's Affidavit, para. 14). A copy of the letter Mr. Uzelac sent to counsel for BNS dated

November 26, 2019 proposing a payment plan is exhibited to the Client's affidavit (Ex. H, p. 102). Copies of the consent order dated January 9, 2020 showing that the Client owed BNS \$16,935.18 plus interest, as well as copies of correspondence between Mr. Uzelac and counsel for BNS throughout 2020 are exhibited to the Huculak Affidavit (Ex. C, pp. 21-30). On January 14, 2020, BNS registered its judgment against the Home.

- [25] In 2020, the Client was participating in the FFRP, as ordered by Fleming J., and the Client instructed Mr. Uzelac to communicate with the FFRP on her behalf in January and July 2020, which is reflected in emails exhibited to the Client's affidavit (Ex. I, pp. 103-111).
- [26] On November 22, 2019, Mr. Rikhia filed an appointment returnable March 25, 2020 to assess his costs of the trial. On March 9, 2020, Registrar Nielsen heard the PHC in the costs assessment and ordered the parties to exchange certain information. The court summary sheet indicates that Mr. Uzelac appeared at this PHC for the Client. Registrar Nielsen's orders at the PHC included that the Client was to provide any affidavits to Mr. Rikhia by March 20, 2020. The Client swore an affidavit on March 20, 2020, which was filed March 24, 2020. The Client attests that she provided the exhibits and drafted most of this affidavit "with minimal revision or input from Mr. Uzelac" (para. 16, Ex. J, pp. 112-124). (Mr. Rikhia's costs assessment was adjourned due to the pandemic and eventually reset for July 14, 2021.)
- [27] The Client attests that in April 2020, she was having a dispute with her tenants and prepared an email, which formed the basis of a cease and desist letter she then instructed Mr. Uzelac to send to the tenants (para. 17, Ex. K, pp. 125-128).
- [28] On December 18, 2019, the Law Society of British Columbia (the "LSBC") issued a citation alleging Mr. Uzelac was guilty of professional misconduct. In a decision of the LSBC hearing panel released on December 3, 2020, Mr. Uzelac made a conditional admission of professional misconduct and consented to serve a four-month suspension starting January 1, 2021: *Re Uzelac*, 2020 LSBC 58 (Client's Affidavit, para. 21, Ex. M).
- [29] The Client attests that Mr. Uzelac advised her in January 2021 that he was suspended from practice and he introduced her to Mr. Huculak, who was taking over for him during the suspension (paras. 21 and 22). The Client attests that she did not particularly like Mr. Huculak and because he advised her that he did not practice family law, in early 2021, she retained Craig Campbell to represent her in the Family Proceedings (para. 23).
- [30] Mr. Huculak attests that he acted for the Client on the following four matters during Mr. Uzelac's suspension: her family file; the BNS judgment against her; FMEP; and the sale of the Home and related applications brought by Mr. Rikhia (Huculak Affidavit, paras. 1 and 2). The Client and Mr. Huculak agree that they did not enter into a written retainer agreement regarding Mr. Huculak's services. Like the retainer with Mr. Uzelac, this retainer was not a contingent fee agreement. Mr. Huculak testified that he did not maintain contemporaneous time records during the retainer (see also Huculak Affidavit, para. 14).

- [31] On February 23, 2021, the Client entered into a contract of purchase and sale of the Home, for approximately \$1.6 million, with a closing date of July 15, 2021. On February 25, 2021, Mr. Huculak wrote to counsel for FMEP requesting that FMEP release the FMEP Charge against the Home (Huculak Affidavit, Ex. D, p. 46). On March 3, 2021, FMEP refused to cancel the FMEP Charge and advised Mr. Huculak that if the Home had been sold, the FMEP would require additional funds as security before it would release the FMEP Charge (Huculak Affidavit, Ex. D, p. 47).
- [32] When he took custody of Mr. Uzelac's practice, Mr. Huculak communicated with counsel for BNS regarding its judgment registered against the Home. On March 2, 2021, BNS offered to accept \$7,500 in settlement, which the Client paid BNS on March 16, 2021 (Huculak Affidavit, para. 8, Ex. C, pp. 34-35). A title search dated March 19, 2021 exhibited to Mr. Huculak's affidavit indicates that the judgment "was released or discharged" by that date (Ex. C, p. 39).
- [33] On March 1, 2021, Mr. Rikhia was granted short leave to set a without notice application on March 8, 2021, seeking to enforce the terms of the Restraining Order. Mr. Huculak filed the Client's response to the application on March 4, 2021 and he appeared by telephone at the hearing before Justice Norell on March 8, 2021. The court summary sheet tendered as an exhibit at the hearing indicates that the matter was adjourned by consent to April 9, 2021 (Ex. 2, p. 1).
- [34] On March 19, 2021, Mr. Rikhia filed an application also returnable April 9, 2021, seeking orders that the Client be found in contempt of the Restraining Order (and other orders not summarized here). The parties consented to have that application also adjourned to April 9, 2021.
- [35] On April 7, 2021, Mr. Campbell filed responses to both of Mr. Rikhia's applications on the Client's behalf, copies of which were obtained from the court file. On April 9, 2021, Justice Walkem adjourned Mr. Rikhia's applications generally, which included the contempt application. Mr. Huculak's evidence was that he helped keep the Client "out of jail for contempt of court" (Huculak Affidavit, para. 15(b)). However, the order of Walkem J. entered April 13, 2021, which was tendered as an exhibit at the hearing, reflects that Mr. Campbell appeared on the Client's behalf, not Mr. Huculak (Ex. 3). Mr. Campbell's appearance is also reflected in the court summary sheet (Client's Affidavit, Ex. O).
- [36] On April 29, 2021, Mr. Huculak filed an application seeking court approval of the sale of the Home, which Master Robertson heard on May 13, 2021.
- [37] Mr. Uzelac's suspension ended on April 30, 2021. Mr. Huculak testified that he continued to represent the Client for a short period in May, but then returned all of the Client's files to Mr. Uzelac. Mr. Huculak's evidence is that Mr. Uzelac has advised him he no longer has the Client's files and Mr. Uzelac does not deny this.

- [38] Master Robertson's order pronounced May 13, 2021 (the "Sale Order") reflects that Mr. Huculak appeared before her on the Client's behalf by MS Teams, as does the court summary sheet tendered as an exhibit at the hearing (Ex. 2, p. 2). The hearing was unopposed. Master Robertson ordered that the proceeds of the sale of the Home were to be held in Mr. Uzelac's trust account and paid out according to the terms of her order, which included paying "the amount determined to be owing to [Mr. Rikhia's] claim for costs after taxation" and "an amount as deposit for security for [FMEP] for future child support by agreement or consent of FMEP".
- [39] Mr. Uzelac attests that the Client also instructed him to act for her regarding a complaint to the College of Dental Surgeons of B.C. about the billing practices of her children's dentist (para. 11(d)). There was no material exhibited to Mr. Uzelac's affidavit pertaining to the complaint to the College of Dental Surgeons. When cross-examined, the Client recalled attending one meeting with Mr. Uzelac and the dentist's insurance company.
- [40] Mr. Uzelac also attests that the Client instructed him to act for her regarding a complaint against her former psychiatrist to the College of Physicians and Surgeons of B.C. (para. 11(b)), however, he did not exhibit any material to his affidavit pertaining to this complaint. The Client testified that she filed the complaint by herself and she did not recall any telephone calls with the College of Physicians and Surgeons and Mr. Uzelac at his office.
- [41] The Client attests that she drafted a letter to FMEP, which Mr. Uzelac revised and returned to her and she sent to FMEP on June 16, 2021 (para. 25). She attests that Mr. Campbell helped her with all her further correspondence with FMEP (para. 26).
- [42] The assessment of Mr. Rikhia's costs was scheduled for July 14, 2021. The Client attests that on July 12, 2021, she met Mr. Uzelac at his office to prepare for the assessment, but that he left their meeting abruptly and, in her opinion, he seemed inebriated and she sent him an email later that day pointing this out (para. 18). Mr. Uzelac's evidence was that he was feeling unwell and had to leave the meeting and he denied that he was inebriated.
- [43] The Client testified that Mr. Uzelac had advised her that as a self-represented litigant, Mr. Rikhia was unlikely to recover the costs he claimed. On July 14, 2021, Registrar Nielsen assessed Mr. Rikhia's tariff costs of the trial, allowing them at \$62,750.00. The Client attests that the result was "disastrous" (para. 19). She also testified that Mr. Uzelac was unprepared at the assessment hearing. Mr. Uzelac could not recall if he prepared a written argument or brief of authorities for the assessment hearing. Registrar Nielsen adjourned the assessment of the balance of disbursements Mr. Rikhia claimed, as noted in the court summary sheet.
- [44] On August 29, 2021, the Client sent an email to Mr. Uzelac, which he describes as "an unsolicited expression of her appreciation for the work done by this Affiant on her behalf"; the email states, "... I hope you understand that I greatly appreciate everything you have always done for me" (Uzelac Affidavit, para. 12, Ex. F). When cross-examined on the email, the Client admitted that she sent the email, but testified that by that point she no longer wanted Mr. Uzelac's assistance and Mr. Campbell was doing most of her legal work. She

testified that she sent the email because she felt she still had to be nice to Mr. Uzelac as he held the proceeds of the sale of the Home in his trust account.

[45] With respect to the assessment of Mr. Rikhia's disbursements and in compliance with orders made by Registrar Nielsen at the July 14, 2021 assessment, the Client attests that in September 2021, she drafted an affidavit addressing the disbursements claimed by Mr. Rikhia, that Mr. Uzelac made minor changes to her draft, and she then swore the affidavit on October 1, 2021 (Client's Affidavit, para. 19, Ex. L).

[46] The Client testified that her retainer with Mr. Uzelac ended by early November 2021 and on November 12, 2021, she filed a notice of intention to act in person in place of Mr. Uzelac. On November 12, 2021, the Client filed an application seeking, among other things, an order that the monies held in Mr. Uzelac's trust account pursuant to the Sale Order be paid to Mr. Campbell. Mr. Rikhia opposed the Client's application, as did Mr. Uzelac.

[47] In Mr. Uzelac's response to the Client's application, which he filed on November 22, 2021, para. 1 of Part 4 provides the following:

Mir Huculak and Milan Uzelac, lawyers who previously acted for the Applicant in relation to the funds have or claim solicitors' liens for fees and disbursements related to the funds in question and seek directions from this Honourable Court regarding the preservation of any legal or equitable lien or charge against the funds or any transfer of funds in response of their claim for fees and disbursements, without which their respective claims therefor may be delayed, hindered or defeated.

[48] Master Robertson heard the Client's application on November 26, 2021 and adjourned it to November 30, 2021, ordering Mr. Uzelac to provide the Client with "an invoice and accounting [of the] amount owing and received by 2:00 p.m. on November 29, 2021" (as stated in the court summary sheet). Mr. Uzelac admits that it was over the course of the weekend of November 27-28, 2021 that he prepared the Uzelac Accounts.

[49] On November 30, 2021, the Client, Mr. Rikhia and Mr. Uzelac appeared before Master Cameron who ordered that the funds held in trust by Mr. Uzelac be paid to Mr. Campbell's law corporation in trust, after Mr. Rikhia had received the tariff costs assessed by Registrar Nielsen (Huculak Affidavit, para. 12, Ex. G). Master Cameron also ordered that Mr. Campbell was to hold \$75,000 in trust to secure Mr. Uzelac's legal fees, and to hold \$20,000 for the yet to be assessed disbursements of Mr. Rikhia.

[50] In January 2022, Mr. Huculak wrote to Mr. Campbell advising that he claimed a solicitor's lien over some of the funds held by Mr. Campbell, asking Mr. Campbell to "set aside enough to cover my taxed costs", which he said was \$9,856 (Huculak Affidavit, para. 10, Ex. E).

- [51] On June 14, 2022, Mr. Uzelac, Mr. Huculak and Mr. Fiddick appeared before Master Muir at a PHC in this review. Master Muir directed that Mr. Uzelac and Mr. Huculak were to instruct Mr. Campbell to send the trust funds to Mr. Fiddick's law firm to be held on the same basis as Master Cameron's earlier order.
- [52] In a letter dated July 27, 2022 to Mr. Uzelac, Mr. Huculak and Mr. Fiddick, Mr. Campbell indicated his intention to transfer \$75,000 from his trust account to Mr. Fiddick's trust account (Huculak Affidavit, para. 11, Ex. F). In the letter, Mr. Campbell writes, "It has always been my understanding that the \$75,000 was intended to be security for payment of the legal accounts of both Milan Uzelac and Mir Huculak" (Huculak Affidavit, Ex. F, p. 77).
- [53] Mr. Campbell passed away suddenly in late April 2023 and he did not swear any affidavits in this proceeding prior to his death.

Position of the Parties

- [54] Both Lawyers take the position that the amount they billed the Client for the work they performed was reasonable. In their closing submissions, both Lawyers submitted that there was sufficient evidence before me to determine that the fees they have billed the Client are justly due and owing to them.
- [55] The Client's position is that in the circumstances, she did not receive competent legal representation at rates that are "reasonably necessary and proper to conduct the proceedings or business to which they relate" (s. 71(2)(a) of the LPA). The Client submits that none of the safeguards exist in this case to determine if the Lawyers' time was reasonably spent and a result properly obtained, pointing to the following evidence: neither of the Lawyers entered into a written retainer agreement with the Client; neither of them maintained contemporaneous time records, both describing themselves as "old school" in that respect; neither of the Lawyers prepared budgets for the Client's approval prior to conducting work, nor did they produce written opinions for her; neither of the Lawyers took notes of their meetings with the Client, and there is no evidence to confirm the Client's instructions to them.
- [56] The Client submits that the Accounts on which the Uzelac Bill is based are unreliable, particularly because Mr. Uzelac created the Accounts over a weekend in late November 2021 after being ordered to do so by Master Robertson. The Client submits that Mr. Uzelac billed her for hundreds of hours of work without producing evidence to support that the charges were properly incurred, even though he has had several months to prepare for this review. The Client submits that the Uzelac Bill should be reduced by at least 40%.

[57] The Client submits that the Huculak Bill should also be reduced on the basis that Mr. Huculak's evidence to support his bill was unreliable. In particular, although Mr. Huculak has indicated that he billed the Client for 44 hours of work, the Client submits that the evidence before me establishes that some of the work Mr. Huculak claims credit for was in fact provided by Mr. Campbell.

Discussion

[58] Pursuant to s. 71(2) of the LPA, the registrar must allow those fees, charges and disbursements reasonably necessary and proper to conduct the proceeding or business to which they relate, or those fees, charges and disbursements authorized by the client or subsequently approved by the client, whether or not they were reasonably necessary and proper to conduct the proceeding or business to which they relate.

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

- (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.

[60] As the circumstances set out in s. 71(4) of the LPA must be considered on this review, I will address each of them in turn further below.

- (a) The complexity, difficulty or novelty of the issues involved

[61] There was no evidence before me to suggest that the substantive legal issues for which the Client sought the Lawyers' services were particularly complex, difficult or novel and this is not a relevant consideration in this case.

- (b) The skill, specialized knowledge and responsibility required of the lawyer

- [62] Both Lawyers testified that they did not regularly practice family law, which was the reason the Client gave for retaining Mr. Campbell's services in early 2021. However, there was no evidence before me to suggest that the substantive legal issues for which the Client sought the Lawyers' services required any specialized skill, knowledge or responsibility and this is not a relevant consideration in this case.
- (c) The lawyer's character and standing in the profession
- [63] Among the factors I must consider on a review of a lawyer's bill under the LPA is "the lawyer's character and standing in the profession" (subs. 71(4)(c)). The Client submits that the Lawyers' character and standing is relevant in this review and that, in particular, I must consider Mr. Uzelac's 4-month suspension during the retainer as it undermines his credibility on this review.
- [64] Both Lawyers objected to the evidence of their LSBC disciplinary proceedings being put before me, asserting that the sanctions were not related to their services to the Client.
- [65] The authorities have repeatedly stated that although the registrar cannot make findings of misconduct because the regulation and discipline of lawyers is within the exclusive jurisdiction of the LSBC, professional misconduct issues may be considered within the context of an LPA review (see, for example, *Bayshore Law Group v. Kursar*, 2019 BCSC 923 [Bayshore Law Group], para. 32, citing *Walker v. Schober*, 2008 BCCA 19, paras. 43, 50 and 51).
- [66] In *Bayshore Law Group*, Registrar Nielsen stated:
- [33] Pursuant to s. 71(4) the registrar must consider "all the circumstances" when determining those fees and disbursements which were reasonably necessary and proper to the proceeding to which they relate. "All the circumstances" may touch on issues of professional misconduct, apparent breaches of the Law Society Rules and The Code of Professional Conduct. Considering these matters in relation to the necessity or propriety of fees and disbursements within an LPA proceeding is not the equivalent of usurping the role of the Law Society in disciplinary matters.
- [67] At the relevant time, both Lawyers were subject to LSBC professional conduct proceedings. [1] Mr. Uzelac made a conditional admission of professional misconduct and agreed to serve a four-month suspension from practice starting January 1, 2021. The Client would never have met or retained Mr. Huculak if not for Mr. Uzelac's suspension. I find that Mr. Uzelac's 4-month suspension during the Client's retainer is relevant to this LPA review.
- [68] The evidence before me at the hearing also demonstrated that Mr. Uzelac's accounting practices were problematic. On the Uzelac Bill, Mr. Uzelac claimed the Client owed him \$98,784.54 (including taxes and disbursements), based on fees of \$103,384.54 less \$4,600 paid from trust. The Client claimed that she had in fact paid Mr. Uzelac \$12,600 towards his retainer. The Client bears the onus of proving any payments made that are not acknowledged by the lawyer (see *Bayshore Law Group*, para. 21, citing *Davis & Company v.*

Jiwan, 2006 BCSC 658, para. 289, and Barker v. Daum, 2015 BCSC 1316 [Barker], para. 122).

[69] The Client exhibited to her affidavit copies of payments she made to Mr. Uzelac by bank drafts, or payments that her parents made on her behalf by cheque, during the course of the retainer (Ex. A, pp. 1-5). Mr. Uzelac could not explain why the Uzelac Accounts did not include all of these payments; he testified that he might not have credited all of them to the Client's account.

[70] I find that the Client's evidence establishes that payments totalling \$12,600 were made to Mr. Uzelac as follows:

- Cheque dated February 5, 2019 for \$4,000.00;
- Cheque dated March 12, 2019 for \$1,000;
- Bank draft dated March 28, 2019 for \$2,500;
- Bank draft dated June 21, 2019 for \$1,500;
- Bank draft dated February 8, 2020 for \$1,500;
- Bank draft dated May 27, 2020 for \$1,000; and
- Bank draft dated December 2, 2020 for \$1,100.

[71] The Law Society's Rules set out the requirements regarding the delivery of bills and the withdrawal of funds from trust, and Rule 3-65 stipulates that a lawyer must deliver a bill before withdrawing money from trust to pay an account.

[72] The Uzelac Accounts show that after receiving the payment of \$1,000 on May 29, 2020, on June 1, 2020, \$1,000 was withdrawn from Mr. Uzelac's trust account as payment for "invoice 2598" and that on December 3, 2020 (the day after the December 2 payment of \$1,100 was made), \$1,100 was withdrawn from his trust account for "invoice 2622" (Client's Affidavit, Ex. B, pp. 26-27, and 30). The Client testified that she never received any interim accounts from Mr. Uzelac during the retainer.

[73] Mr. Uzelac attests that "interim accounts were available for the client in the Firm's/Client's file and made available upon request" (Uzelac Affidavit, para. 10). When cross-examined on the issue, Mr. Uzelac did not deny that he never rendered any interim accounts to the Client and admitted that he now knows that the LSBC Rules require that a lawyer who withdraws trust funds for the payment of the lawyer's fees must "first prepare a bill for those fees and immediately deliver the bill to the client."

[74] On the second day of the hearing, Mr. Uzelac produced a revised statement of account reducing his fees to \$86,575.74, which he said reflected payments of \$12,000 from his trust account towards the Client's bill, as well as the removal of a duplicate entry in the Uzelac Accounts of \$4,240 on August 31, 2021. However, I find that Mr. Uzelac's credibility regarding the accuracy of the Uzelac Accounts was seriously undermined by the evidence before me at the hearing, which I detail further below.

(d) The amount involved

[75] The Client submits that the amount involved was significant for her. When the Client retained Mr. Uzelac, she was disputing the fees Mr. Groves had charged her, which were approximately \$125,000. During the retainer, in July 2019, Registrar Nielsen ordered that Mr. Groves could apply approximately \$66,000 held in his trust account towards his outstanding fees, subject to further review of his accounts. The Groves LPA Review has yet to take place. In July 2021, Registrar Nielsen assessed Mr. Rikhia's tariff costs of the trial at over \$62,000. The amount was paid out to Mr. Rikhia from the proceeds of the sale of the Home pursuant to the court orders, but Mr. Rikhia's disbursements are still to be assessed. The Client was able to settle the BNS judgment and to sell the Home, but Mr. Fiddick has held \$75,000 in his trust account pending this review. In the circumstances of this case, I find that the amount was significant to this client.

(e) The time reasonably spent

[76] On a review under the LPA, the authorities are clear that the lawyer bears the onus to prove that the work done and the accounts issued for the work done were necessary and reasonable (see, for example, *Purcell v. McLean*, 2023 BCSC 365, para. 22).

[77] In this case, it has been challenging to determine whether the time the Lawyers allege they spent is reasonable in the circumstances because neither of the Lawyers maintained contemporaneous time records for the work they performed for the Client. In addition, both Lawyers admitted that they suffer from ongoing health problems, which affects their memories, including during the relevant time.

[78] As I explain below, I find that based on the evidence before me at the hearing, the time the Lawyers claim they spent is neither reasonable nor justified in the circumstances.

I. Mr. Huculak's hours

[79] The Huculak Bill indicates it is "based on 44 hours" (Huculak Affidavit, Ex. A). Mr. Huculak admitted that it was possible his time records are inaccurate, but maintained that his fees should have been higher.

- [80] Mr. Huculak attests that in determining that he spent 44 hours on the Client's matters, he relied on his own summaries of telephone calls and dates of meetings with the Client, which he admitted he created in November 2022, as well as documents relating to the BNS judgment and the FMEP Charge (Huculak Affidavit, paras. 7-9).
- [81] Mr. Huculak's summary of the telephone calls with the Client indicates that he received 37 telephone calls from the Client and he attached approximately 15 pages of copies of phone records in support (Huculak Affidavit, Ex. B, pp. 2-17). However, Mr. Huculak could not recall what was discussed during the telephone calls with the Client.
- [82] Mr. Huculak's summary of meetings "with or on behalf of [the Client] and court appearances" indicates that he had 14 meetings and attended court on the Client's behalf on three occasions: March 8, April 9, and May 13, 2021 (Huculak Affidavit, Ex. B, pp. 18-19). Mr. Huculak testified that he based this list on information in his diaries, but he admitted that the diaries were not in evidence. Mr. Huculak also admitted that some of the meetings he recorded were not necessarily with the Client, but were on her behalf and he acknowledged this included meeting with Mr. Uzelac to discuss the Client's files on March 3 and 18, 2021, during Mr. Uzelac's suspension (although I note Mr. Uzelac did not bill any time for these meetings).
- [83] Mr. Huculak exhibited to his affidavit a one-page summary of the time he estimates he spent preparing and attending at the three court proceedings at which he claims he represented the Client (Ex. B, p. 19). Mr. Huculak claims that the proceeding on March 8 was for a half-day and he spent one day in related "preparation and documents". He claims that the April 9 proceeding was "all day" and that he spent two days "preparation and documents". He claims that the May 13 proceeding was for a half-day and he spent one day for "preparation and documents".
- [84] As I noted, Mr. Huculak prepared the Client's response to Mr. Rikhia's application to enforce the terms of the Restraining Order and appeared by telephone at the hearing before Norell J. on March 8, at which the application was adjourned. Mr. Huculak also appeared at the unopposed hearing before Master Robertson on May 13, 2021 at which she issued the Sale Order.
- [85] When the court summary sheet for the April 9, 2021 hearing before Walkem J. showing that Mr. Campbell appeared for the Client, not Mr. Huculak, was put to Mr. Huculak, he admitted that he was mistaken in indicating that he appeared in court on that date. Although Mr. Huculak had filed a response to Mr. Rikhia's first application, as I noted, the court file shows that Mr. Campbell filed the Client's responses to Mr. Rikhia's applications, which were the subject of the proceedings before Walkem J. The Client did not change her position under cross-examination that it was Mr. Campbell, not Mr. Huculak, who prepared the responses and assisted her with that proceeding.

- [86] I find that Mr. Huculak's hours must be reduced from the 44 hours he has claimed to reflect that Mr. Campbell performed work for which Mr. Huculak has claimed credit. I find that based on the evidence before me, a reasonable amount of time for the services Mr. Huculak provided to the Client pertaining to the BNS judgment, the sale of the Home and the FMEP issues is 25 hours.

II. Mr. Uzelac's hours

- [87] The Uzelac Bill does not indicate the total number of hours, but based on the hourly rate of \$400, Mr. Uzelac would have spent approximately 230 hours on the Client's files from January 2019 through October 2021, less the four-month suspension period. The number of hours is approximate; although Mr. Uzelac's hours are recorded in the Uzelac Accounts, there is no running total and, on some occasions, Mr. Uzelac has charged \$500 per hour, or not charged for the time recorded.
- [88] Mr. Uzelac prepared the Uzelac Accounts in late November 2021 and the Uzelac Accounts reflect that nearly all of the time entries were made on "20211127" (which Mr. Uzelac admitted was November 27, 2021), although a couple of the entries were made on "20220203" (which Mr. Uzelac admitted was February 3, 2022, after the retainer with the Client had ended). Mr. Uzelac testified that in preparing the Uzelac Accounts, he relied on emails and documents, which he had provided to the Client. He also attested to this in his affidavit, stating: "the work done is reflected and can be identified by reference to the dates on the copies of the e-mails and documentation provided to the Client bearing the same date as the time entry" (para. 27). Mr. Uzelac did not exhibit any emails and documents to his affidavit, although he bears the onus of proving his hours were reasonably spent.
- [89] The information in the Uzelac Accounts is not descriptive, but consists mainly of entries for "receipt and review" of emails from the Client, or for "telephone call with Client" and Mr. Uzelac could not recall what services he performed for the Client relating to the various entries Mr. Fiddick put to him. His evidence was that "receipt and review" was when a document or email would come in and he would review it.
- [90] The Uzelac Accounts also include Mr. Uzelac's time to prepare the accounts themselves: on November 30, 2021, Mr. Uzelac recorded 10.40 hours (4 hours for "preparation" and 6.4 hours for "preparation at account"), totalling \$4,160. He also has recorded time on December 30, 2021 of 1.7 hours for "receipt and review" totalling \$680.00.
- [91] In order to assess the reasonableness of the time Mr. Uzelac claims and the reliability of the Uzelac Accounts, I cross-referenced the entries in the Uzelac Accounts to the dates when Mr. Uzelac appeared in court on the Client's behalf (February 4, 2019; May 10, 2019; July 16, 2019; March 9, 2020; and July 14, 2021). This exercise demonstrates how unreliable the Uzelac Accounts are.

- [92] On February 4, 2019, the PHC in the Groves LPA was held. The Uzelac Accounts indicate "MU 0.00 Hrs X \$400 Attendance at court" (there is no reference to the PHC). The Uzelac Accounts include other entries on February 4, 2019 for "receipt and review 2 emails from client" (0.00 hrs), "receipt and review email from Mr. Rikhia" (0.10 hours) and "telephone call with client" (0.20 hours) (Client's Affidavit, Ex. B, pp. 6-7).
- [93] On May 10, 2019, Fleming J. heard the applications of Mr. Rikhia and FMEP and the Uzelac Accounts reflect that Mr. Uzelac billed the Client 1.5 hours for "attendance at court" (Client's Affidavit, Ex. B, p. 12).
- [94] On July 16, 2019, as reflected in the order of Registrar Nielsen, Mr. Uzelac appeared before him on the Groves LPA Review. Where Mr. Uzelac has not charged the Client, the Uzelac Accounts will show "0.00 hours". However, none of the five entries in the Uzelac Accounts for July 16, 2019 are for "attendance at court" (with a \$0 entry), but are for "receipt and review" of various emails (Client's Affidavit, Ex. B, p. 14). None of the entries for July 15 or 17, 2019 are for "attendance at court", in the event a mistake was made regarding the court date.
- [95] On March 9, 2020, Mr. Uzelac represented the Client at the PHC before Registrar Nielsen related to the assessment of Mr. Rikhia's costs. None of the three entries in the Uzelac Accounts dated March 9, 2020 refer to "attendance at court"; however, Mr. Uzelac has recorded 10 hours on March 9, 2020 for "preparation rfevied [sic] BNOA and affidavit, re-mail [sic] to client"; he has also recorded 0.20 hours for "receipt and review e-maoil [sic] from client with spreadsheet, and 0.10 hours for "receipt and review e-0mail [sic] from court reportewrs [sic]" (Client's Affidavit, Ex. B, p. 22).
- [96] There are no entries in the Uzelac Accounts for July 14, 2021, when Mr. Rikhia's costs were assessed before Registrar Nielsen. On June 30, 2021, there are two entries in the Uzelac Accounts, one for 6.60 hours for "receipt and review", and the other for 6.50 hours for "preparation", but the next entry is dated July 21, 2021.
- [97] Mr. Uzelac did not testify that he did not charge the Client for the time he spent in court on the dates noted above, or that it is his practice to not include an entry if he is not billing for it. The fact that the Uzelac Accounts do not include any time entries on dates when the court record shows that Mr. Uzelac appeared on the Client's behalf undermines their accuracy and reliability.
- [98] Mr. Uzelac did not lead evidence to dispute the Client's evidence that he drafted pleadings and affidavits for her by simply cutting and pasting from her emails, as exemplified by the response he filed to Mr. Rikhia's applications, which includes the request for an adjournment exactly as drafted by the Client in her email. This evidence also undermines the reliability and accuracy of the Uzelac Accounts.
- [99] Some entries on the Uzelac Accounts appear to be duplicative. For example, on January 25, 2019, Mr. Uzelac recorded "1.20 hrs X \$500 conference with client" for \$600, as well as "1.5 hrs X \$400 conference with staff" for \$600. On March 25, 2019, there are two entries for 1

hour at \$400 each, both described as "preparation of preparation". Mr. Uzelac admitted that two entries dated August 31, 2021 of "10.60 hrs X \$400 receipt and review" for \$4240 each were duplicative and as noted above, he revised the Uzelac Bill to remove one (see also Uzelac Affidavit, para. 27).

[100] In his affidavit, Mr. Uzelac responded to one of the Client's objections to his bill, namely that he had billed her for his time during his suspension from practice. He attested that allegations that he "recorded and billed time to the client during the time of his suspension are misleading and inaccurate. If there are entries made in the Account during that time period they were made, if at all, inadvertently, in error, and are inconsequential in any event" (para. 24). Mr. Uzelac further attested:

On several occasions during this Affiant's suspension, the Client deliberately called the lawyer seeking to elicit advice, counsel, direction or to talk to this Affiant and on each such occasion, the client was firmly told in no uncertain terms that this Affiant lawyer could not and would not talk to her, and that she should and must direct her communications to Mr. Mir Huculak, who had conduct of this Affiant's files during the suspension, or other counsel of her choice. As this Affiant took the period of the suspension as a respite from the practice, this Affiant had no interest in doing work for the Client or any other client during that time. (Uzelac Affidavit, para. 25).

[101] Mr. Fiddick put to Mr. Uzelac that the Uzelac Accounts include entries during his suspension from practice, directing him to the following entries (in other entries on April 29 and 30, 2021, Mr. Uzelac recorded 0 hours):

- March 11, 2021 for .10 hours for "receipt and review email from AJ";
- April 8, 2021 for .10 hours for "receipt and review of receipt and review copy of email satring drom [sic] client";
- April 9, 2021 for .10 hours for "receipt and review of receipt and review email from court scheduling";
- April 27, 2021 for .10 hours for "receipt and review email from o/s counsel;
- April 27, 2021 for .10 hours for "receipt and review email from client re eviction OrDWE [sic]"; and
- April 29, 2021 for .10 hours for "receipt and review email from clie: Dr. Reza Nouri Complaint Details"

[102] Mr. Uzelac denied that he performed work while he was suspended and suggested that those might have been erroneous entries.

[103] Mr. Uzelac maintained at the hearing that the amount of time he billed the Client was reasonable, even though he admitted when it was put to him by Mr. Fiddick that he had no independent recollection of what he was doing on particular dates when he created the Uzelac Accounts in November 2021.

- [104] Mr. Uzelac did not deny that he created the Uzelac Accounts because he was ordered to by Master Robertson, and that at that time he was upset that the Client was not paying his bill. He also attests to this in his affidavit, stating that the Uzelac Account "was prepared after the client made an obvious attempt to avoid payment of any amount for legal services properly provided at her request, all of which she approved, resulting in the Firm having to make an unanticipated application for security for the fee pursuant to a lawfully enforceable solicitor's/lawyer's lien for services rendered" (para. 21).
- [105] Mr. Uzelac admitted that he was surprised at the number of hours he claimed on the Uzelac Accounts when it was put to him by Mr. Fiddick, but maintained that they accurately reflected the time he spent and he saw no need to discount his fees, even though they exceeded the \$75,000 hold back ordered by Master Cameron.
- [106] I find that the Uzelac Accounts are inherently unreliable. The entries lack sufficient (if any) descriptive detail on which to determine the nature of the work Mr. Uzelac was performing for the Client. Mr. Uzelac has not recorded time on dates when he appeared in court, and has recorded a large number of hours on other dates with little explanation, other than the single word "preparation". The evidence before me does not support the amount of time Mr. Uzelac is claiming he worked for the Client in the Uzelac Accounts and I find that it must be reduced on the basis that the hours claimed are unreasonable in the circumstances.
- (f) Whether the hourly rate was reasonable
- [107] Both of the Lawyers testified that they are "old school" and both confirmed that neither of them had entered into a written retainer agreement with the Client.
- [108] In LPA reviews, Registrar Nielsen has cited *Nathanson, Schachter & Thompson v. Whitney*, 1994 CanLII 758 (BC CA), at para. 49, as authority that in the absence of a written retainer, there is an implied term that the lawyer will be remunerated for the work done based upon a fair fee assessed on the basis of the factors set out in s. 71(4) of the LPA (see, for example, *Bayshore Law Group*, para. 16 and *Barker*, para. 83).
- [109] Mr. Huculak charged the Client \$200 per hour for his services. I find that this hourly rate was reasonable and a fair fee in the circumstances.
- [110] The Uzelac Accounts reflect that Mr. Uzelac charged the Client \$400 per hour and, in some instances, \$500 per hour.
- [111] Mr. Uzelac's evidence is that at the outset of his representation of the Client, they discussed the issue of his hourly rate and in his affidavit, he attests:

the Affiant advised that the Affiant's hourly rate would not be less than that charged by Mr. Groves and that given the writer's greater number of year of practice than Mr. Groves and or the other members of Brandon Lessing, would be more in the order of that charged by Mr. Lessing as set out in Mr. Groves fee Agreement. The rate utilized in the Account was generally \$400 per hour, which is reasonable considering the number of years of legal experience of this Affiant. The

client agreed or, for all intents and purposes acquiesced that an hourly rate equal to or greater than that charged by her previous counsel, Kevin Groves would apply where necessary. In any event, the Client has not raised or included the rate charged as an objection in her said List of objections, nor at all in any other in correspondence or communication and, accordingly, it is the position of the Firm is that it is not in issue in the within taxation.

(Uzelac Affidavit, para. 7).

[112] The Client attests that when she retained Mr. Uzelac, she was very concerned about fees, having just received a bill for \$125,000 from Mr. Groves, which she was seeking to review with Mr. Uzelac's assistance. She attests that although Mr. Uzelac advised her and her parents that he normally charged \$400 per hour, he knew she was concerned about her finances and had agreed to charge her the hourly legal aid rate of \$175 and that was what she expected to pay (see also Client's Affidavit, para. 6). She testified that she did not receive a bill from Mr. Uzelac until after the retainer had ended and Master Robertson ordered Mr. Uzelac to prepare the bill in late November 2021, and was shocked to discover he charged her \$400 per hour.

[113] Mr. Uzelac did not challenge the Client's evidence about his hourly rate when he cross-examined her.

[114] Mr. Uzelac acknowledged that he was aware of the Client's financial circumstances, and that she was concerned about the money she was spending to defend herself in the Family Proceedings. I accept the Client's evidence that in the circumstances of this case, where the Client specifically retained Mr. Uzelac to assist her review the bill of her former lawyer, she would have negotiated a lower hourly rate with Mr. Uzelac than the hourly rate she was charged by Mr. Groves.

[115] I find that a fair fee in the circumstances is \$200 per hour, the same rate charged by Mr. Huculak when he took custody of Mr. Uzelac's practice.

(g) The importance of the matter to the client

[116] In their affidavits and during their testimony, the Lawyers repeatedly described the Client as "pushy", "demanding" and "difficult". Mr. Fiddick submits that the Client was demanding because the legal problems she was facing were extremely important to her.

(h) The result obtained

[117] In the four months that Mr. Huculak represented her, he was able to reach a settlement with the BNS to cancel its judgment so that she could sell the Home, and he helped her effect the sale of the Home. It was only during the hearing that Mr. Huculak admitted that Mr. Campbell represented the Client when Walkem J. generally adjourned Mr. Rikhia's contempt application and he was not responsible for "keeping her out of jail". Mr. Huculak's results for the Client were mixed.

[118] Mr. Uzelac did not achieve results for the Client. As of this hearing, the Groves LPA Review was outstanding and Registrar Nielsen had ordered that Mr. Groves could withdraw half of the fees he claimed (\$66,000) from the funds he held in trust for the Client. As well, the assessment of Mr. Rikhia's disbursements was outstanding and the tariff costs allowed by Registrar Nielsen had been paid out to Mr. Rikhia from the sale proceeds of the Home.

Summary

- [119] The LPA requires the registrar to allow those fees, charges and disbursements reasonably necessary and proper to conduct the proceeding or business to which they relate (or those fees authorized by the client or subsequently approved by the client, whether or not they were reasonably necessary and proper to conduct the proceeding or business to which they relate).
- [120] The Client did not receive any bills from Mr. Uzelac until November 2021, well after she retained him in January 2019, and I find that she did not authorize or subsequently approve the fees he charged her, or acquiesce to those fees as Mr. Uzelac submits. Mr. Huculak did not submit that the Client had authorized or subsequently approved his fees.
- [121] The authorities on LPA reviews hold that at the end of the day, the registrar "should allow a fair fee commensurate with the work performed in the retainer and taking into account all of the circumstances": *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals dismissed 2022 BCSC 329 and 2023 BCCA 123).
- [122] However, the court recognizes that 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": *Davies v. Hunter*, 1995 CanLII 1028 (BC SC), para. 23. In *Davies v. Hunter*, Registrar Wellburn disallowed the lawyer's accounts for fees and disbursements and this was upheld on appeal to the Supreme Court.
- [123] I have found that Mr. Huculak's fees should be reduced from the 44 hours he claimed on the Huculak Bill to a total of 25 hours to reflect the fact that he has claimed for work that was performed by Mr. Campbell. As a result, I find that Mr. Huculak's fees are allowed at \$5,000 plus applicable taxes for a total of \$5,600. Mr. Huculak did not claim any disbursements on the Huculak Bill and none are allowed.
- [124] Mr. Uzelac's credibility at the hearing was undermined by the fact that he created the Uzelac Accounts over one weekend in November 2021 and admitted that he had no direct recollection of the work he performed for the Client on the various dates to justify his fees. I find the Uzelac Accounts are unreliable and inaccurate as I have detailed above. I find that Mr. Uzelac's credibility is also undermined by the fact of his four-month suspension from practice during the retainer and the problems with his accounting I set out above.

- [125] I find that the evidence does not support Mr. Uzelac's claim that he is entitled to \$86,575.74 (including taxes), the amount he claims on the revised Uzelac Bill tendered during the hearing. I have found that Mr. Uzelac did not establish that the Client had agreed to pay him an hourly rate of \$400 (or \$500) as he asserts, but that a reasonable amount was \$200 per hour (as Mr. Huculak charged).
- [126] The Client has established that she paid Mr. Uzelac \$12,600 during the retainer. I find that in the circumstances of this case, Mr. Uzelac failed to carry out his instructions competently and adequately and his fees must be reduced. I find that a fair fee for Mr. Uzelac's services in the circumstances is \$20,000, including taxes.

Disposition

- [127] I find that Mr. Huculak's fees and disbursements are allowed at \$5,000 plus applicable taxes for a total of \$5,600. I find that Mr. Uzelac's fees and disbursements are allowed at \$20,000 (including taxes), but that \$12,600 (the amount I found the Client had paid Mr. Uzelac) must be deducted from this amount, such that the total allowed is \$7,400.
- [128] Based on the evidence of the submissions to Master Cameron and the correspondence with Mr. Campbell summarized above, I find that Mr. Huculak is entitled to his fees from the \$75,000 held in trust by Mr. Fiddick.
- [129] I have reduced both the Uzelac Bill and the Huculak Bill by more than 1/6th of the total fees claimed and, as a result, subs. 72(1) of the LPA stipulates that the Solicitors must pay the Client's costs of this LPA review.

"Registrar Gaily"

- [1] The evidence before me was that on August 26, 2020, the LSBC issued a citation alleging Mr. Huculak was guilty of professional misconduct; the LSBC amended the citation on August 4, 2021 (after Mr. Huculak ceased working for the Client) and the LSBC hearing panel released its decision finding Mr. Huculak guilty of professional misconduct on August 5, 2022: Re Huculak, 2022 LSBC 26 (Client's affidavit, para. 22, Ex. N). On February 27, 2023, a month before this hearing, the LSBC issued its decision disbaring Mr. Huculak: Re Huculak, 2023 LSBC 05 (a copy of which the Client's counsel provided at the hearing).

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