

CANADA / JUDGMENT

Porter Ramsay LLP v. Bell

2013 BCSC 466

COURT

Supreme Court of British Columbia

DECIDED

19 March 2013

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2013 BCSC 466 Porter Ramsay LLP v. Bell IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Porter Ramsay LLP v. Bell, 2013 BCSC 466 Date: 20130319 Docket: 95720 Registry:

Kelowna Re: In the Matter of the Legal Profession Act, S.B.C. 1998, c. 9, s. 70 Between: Dennis K.

Boon Porter Ramsay LLP Law Firm And Iain Bell Client Before: Master Young (As Registrar)

Reasons for Decision Counsel for the Law Firm: D.K. Boon Appearing on his own behalf: I. Bell

Place and Date of Hearing: Kelowna, B.C. December 17, 2012 Place and Date of Judgment:

Kelowna, B.C. March 19, 2013

- [1] Mr. Bell has taken out an appointment to assess the legal accounts of Mr. Boon, rendered for representation of Mr. Bell in a matrimonial proceeding. Mr. Bell says that he did not get good service, and so he does not believe he should have to pay the full amount billed.
- [2] The matrimonial proceeding was acrimonious. Mr. Bell was never in a strong legal position, and this has been a very hard pill for him to swallow. He blames Mr. Boon for that, but I find the blame for much of his palpable discontent is misplaced.
- [3] Mr. and Mrs. Bell separated after a 26-year marriage. I presided over an interim spousal support application, and in my notes of my oral reasons I noted that Mrs. Bell was 63 years of age at the date of separation and Mr. Bell was 51. Mrs. Bell was a homemaker with no income. She had suffered a fairly significant elbow injury requiring extensive surgery from which she had still not recovered. She suffered from depression, and her work experience was limited.
- [4] Mr. Bell retrained during the marriage, and had a civil engineering diploma. He was working for the City of Creston, and was earning \$122,000 at the time of the application.
- [5] Of course, he was ordered to pay spousal support and he had to divide up all of the family assets. The end result was that the assets were divided more or less equally. It is Mr. Bell's view that Mrs. Bell received more than one-half of the house contents, but I am not certain that they had a large monetary value.

- [6] It may seem to Mr. Bell that the law is unfair, but the reality is that when he left the marriage he was in a far better financial situation than his wife was and the law apportioned their financial resources so that they were in a relatively similar situation. I am not sure if Mrs. Bell is employable; Mr. Bell has a healthy income and a profession. Evidence of the Solicitor
- [7] Mr. Boon gave evidence describing his 40 years of practicing law, and his expertise in family law.
- [8] Mr. Boon was retained by Mr. Bell on May 26, 2009, and in that first meeting he advised Mr. Bell of his hourly billing rate (\$325 per hour).
- [9] Mr. Boon did not think that Mr. Bell was in a strong position, given the facts of the case. He discussed this with Mr. Bell, and discussed the Spousal Support Guidelines, division of assets, and whether or not the inheritance Mr. Bell received during the marriage was a family asset.
- [10] Mr. Boon's observation was that the relationship between Mr. Bell and his wife was never cordial. There were many high emotion emails between them. Opposing counsel threatened to take the matter to court for interim orders right off the bat, and demanded discoveries which Mr. Bell resisted. Examinations for discovery were conducted, and Mr. Boon provided Mr. Bell with a lengthy analysis of the case after the discovery. Mr. Bell complained about the cost of the process, and complained about the legal system.
- [11] Settlement offers were exchanged, and Mr. Bell's reaction to his wife's offer was to say, "She is shooting for the stars" and "We'll see you in court." He threatened to drag the legal matter out until there was nothing left. Mrs. Bell's lawyer set the matter down for trial. Mr. Bell was unhappy with the cost, unhappy with the outcome of the interim spousal support application, and wanted to settle out of court because he thought judges give the women the upper hand.
- [12] Mr. Boon pursued opposing counsel, trying to settle the case. He also needed to prepare for trial, in case the matter did not settle. He met twice with opposing counsel the week before trial, and the negotiations continued into the evening of the Friday before trial. Mr. Boon obtained Mr. Bell's instruction to settle the legal matter before trial. Mr. Boon said, "I was very careful with Mr. Bell. I was aware of his personality. I thought he was relieved that the matter would not proceed to trial on Monday." When the case did settle, Mr. Bell said, "What the hell, it's only money." Mr. Boon was perplexed by this, because Mr. Bell was very money conscious.
- [13] As a result of the settlement, the trial was adjourned. Mrs. Bell's lawyer sent a draft consent order to Mr. Boon, who sent the draft order to Mr. Bell for review. Mr. Boon said, "The next week things went from bad to worse."

- [14] In the draft consent order there were a number of pension division clauses that had not been specifically addressed during the negotiation, which Mr. Bell took issue with. He also took issue with some insurance provisions. Mr. Boon thought the clauses were straight forward and routine, and were not essential elements of the settlement.
- [15] One of Mr. Bell's parting comments before Mr. Boon got off the record was, "Let me make it perfectly clear, there is no settlement. I am not going to be railroaded because you failed to put together a settlement until the eleventh hour." Mr. Boon's response was that the client wanted a settlement. He did not want to go to court. He was not railroaded. It is not uncommon to have negotiations get serious when the trial date is looming near.
- [16] In summary, Mr. Boon found Mr. Bell difficult to get instructions from because he was inconsistent. He wanted to settle, but he wanted it his way. Then he wanted to drag out the process to pressure his wife. Client's Evidence
- [17] Mr. Bell's evidence is contained in his affidavit sworn on June 26, 2012. He did give evidence-in-chief as well, and was cross-examined.
- [18] Mr. Bell said: In our initial interview and discussing costs Mr. Boon explained that a case that was settled out of court would cost in the region of \$20,000 and if the case went to trial it could cost as much as \$50,000.
- [19] Mr. Bell said that, "Costs and settling this matter was of prime importance to me." He sent a letter to Mr. Boon that said: ... I am very concerned as to the costs involved, so my direction to you with regard to this matter is that only the minimum amount necessary be expended and that all attempts at mediation be made to conclude the divorce with the minimum of difficulty and expense. And, on August 30, 2009, he wrote to Mr. Boon and said: Please proceed with a mediated settlement. If the other party does not wish to participate, please delay until the new rules come into effect July 2010.
- [20] Mr. Bell's impression of the settlement was that he lost on almost every point in the settlement. He said that Mr. Boon failed to deliver services as required by the Law Society's Professional Conduct Handbook. He said he was forced to dispense with Mr. Boon's services.
- [21] Mr. Bell said that countless requests were made to draft settlement proposals, and that these were never acted upon. The most troubling for him was the request he made on July 13, 2010. He sent the following email: Subject: Trial Hi Dennis I see we are being summoned to trial. I see this rush to trial as failing to explore all avenues for settlement. We have seen one offer for settlement and one counter proposal and now we are headed for trial? This smacks of a rush to create a huge legal bill for me to foot? Before we even consider this, I need to know that both parties are at an absolute impasse in regards to settlement negotiations. The other side has shown scant to no willingness to settle this issue through negotiation. If and when we reach an impasse then we can take the next step, which I see as being a Judicial Case Conference and NOT a full blown trial. Mr. King really doesn't seem to care that every cent of this procedure is being paid for by me, therefore I am not going to acquiesce to any

bullying tactics until he shows that their main objective is to settle at the least cost and inconvenience to all parties. (page 12 of 23, Exhibit G2).

- [22] In response, Mr. Boon recommended a settlement conference.
- [23] Apparently opposing counsel was not willing to attend. The interim application for spousal support was heard by me in August 2011.
- [24] Mr. Boon was instructed to prepare a written settlement proposal after the trial management conference, which was held on August 22, 2011. Apparently it took five weeks for him to do so. On October 6, 2011 this had not been done yet, and Mr. Bell wrote to Mr. Boon and said: We have two weeks to reach a settlement please explain to me how you expect to do this? Mr. Boon's response was not provided in evidence.
- [25] A subsequent email was sent by Mr. Bell on October 17, 2011: Good Morning Dennis Hopefully you can get a settlement offer to King today at the latest? My fear is that leaving this so late, we are going to be forced into court and will spend unnecessary time and incur huge court expense to try and settle the asset issues. I am also concerned what the court's attitude will be to settlement offers at this late date knowing we had plenty of time to get this settled? I do not have a responding email. Mr. Boon acknowledged that he was slow in getting the offer prepared.
- [26] Mr. Bell was critical of Mr. Boon's presentation at the trial management conference. Opposing counsel made many disparaging comments about Mr. Bell, and Mr. Bell thought that Mr. Boon should have set the record straight and defended him before the judge.
- [27] Mr. Bell complained that he had trouble getting responses from Mr. Boon to his inquiries.
- [28] Mr. Bell asked Mr. Boon for a list of possessions, and it took six weeks to get the list. Mr. Boon was late filing the court ordered financial statement; it was sworn a month after the court ordered deadline.
- [29] It took five weeks to get the letter out to opposing counsel that Mr. Bell had requested. He did not receive copies of letters that were sent out on his file, so he was not always advised of the progress in his legal matter.
- [30] The final complaint Mr. Bell had was that Mr. Boon allegedly authorized the form of consent order settling the legal matter, without consulting Mr. Bell regarding the details.
- [31] Mr. Bell also accused Mr. Boon of inflating his time recording. The Retainer Agreement
- [32] Unfortunately no retainer agreement was provided in writing. On May 26, 2009, during their first meeting, Mr. Boon told Mr. Bell that he would be charged \$325 per hour for legal services performed by Mr. Boon. Due to an accounting error, Mr. Boon's rate was charged at \$350 per hour. This was not drawn to his attention until the hearing, and during the break Mr. Boon provided the court and Mr. Bell with a revised schedule showing the corrected hourly rate.

- [33] The following is Mr. Boon's summary of that recalculation, which does not show the original fee billed but does show the recalculated fee schedule. It was entered as Exhibit 2 in these proceedings: Invoice Date Fee Discount Net Fee Disbursements Total 104933 July 23, 2009 \$2,080.00 \$2,080.00 \$576.67 \$2,656.67 10611 Nov. 26, 2009 \$5,297.50 \$905.00 \$4,392.50 \$933.25 \$5,325.75 109516 Jan. 24, 2011 \$3,867.50 \$3,867.50 \$647.43 \$4,514.93 111663 May 30, 2011 \$3,510.00 \$280.00 \$3,230.00 \$422.22 \$3,652.22 114485 Nov. 29, 2011 \$24,862.50 \$1,775.00 \$23,087.50 \$3,237.97 \$26,325.47 Total: \$42,475.04 It appears that disbursements include GST, PST and, where applicable, HST. Fee Estimate
- [34] In the first meeting, Mr. Boon gave a preliminary estimate of what the cost of the legal proceeding would be if the parties settled. He said that a case that settles out of court might cost \$20,000 whereas a case that goes to trial might cost \$50,000.
- [35] Mr. Bell took the position that this was a fee quote. I find it was a preliminary fee estimate at best, and not binding on Mr. Boon. The estimate was given as a means of encouraging Mr. Bell to have realistic expectations and to consider the increased cost of taking a matter to court. The Law
- [36] Section 71(4) of the Legal Profession Act, S.B.C. 1998, c. 9 sets out the factors a registrar must consider on a review of lawyers' bills. That section provides as follows: 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.
- [37] With respect to the application of each of those factors in this matter, I find as follows:
- (a) The complexity, difficulty or novelty of the issues involved
- [38] The legal issues in this case were not complex or novel, but I would characterize this as a difficult case with a very difficult client. Mr. Bell thought he knew more about how to conduct a family law proceeding than did his lawyer, who has 40 years' experience.

- [39] Mr. Bell gave Mr. Boon repeatedly unreasonable and inconsistent instructions. For example, he was of the strong view that he should not base support on his current income, but on the income he earned at the date of separation. He was also of the view that the proper figure on which to base spousal support was his net income. This is clearly wrong, but he was insistent.
- [40] Mr. Bell refused to provide his T-4 slip when demanded from Mrs. Bell's lawyer.
- [41] Mr. Bell threatened to quit his job and leave the country.
- [42] Mr. Bell made comments at one point that, "I will happily keep this lawsuit going until there is nothing left. Settlement will be on my terms not theirs."
- [43] Mr. Bell developed a great deal of animosity for the opposing counsel, which often happens in matrimonial proceedings. It became a fixation, and he wanted to report opposing counsel to the Law Society.
- [44] Mr. Bell did not agree to allow Mrs. Bell's lawyer to retain the net proceeds of sale in his trust account, because of his mistrust of him.
- [45] Mr. Bell imposed "tactics" on his counsel, after the house sold and his wife had to move out of the home. He said, "I want to drag this out as long as we can so she will be under pressure to settle with me." "Call his [opposing counsel's] bluff and let him take me to court. I would like to see what a judge does with this."
- [46] To his credit, Mr. Boon never wavered. He gave reasonable advice, and kept his focus on the legal issues and the resolution of the file. He did not adopt the angry, aggressive, approach of Mr. Bell, or the adversarial approach of the opposing counsel. He had difficulty getting opposing counsel to agree to attend a settlement conference, so he made an appointment to meet him in person and discuss settlement. He pursued this settlement, and agreed to meet opposing counsel on Friday evening before the trial after a busy day in court. This is when the case settled, but the order was not drafted.
- [47] Once a settlement was finally reached, Mr. Bell tried to resile from the settlement, citing some details in the consent order as his rationale.
- [48] The case settled late on Friday evening. Mr. Boon was clear that he had instructions to settle the case before he adjourned the trial, which was scheduled for the following Monday. As a result of Mr. Bell resiling from the agreement, Mr. Boon was in a position of conflict and quite correctly had to withdraw from the case.
- [49] Mrs. Bell's lawyer set down an application to enforce the agreement. A few terms which I would consider peripheral to the main agreement were amended, but the essential terms of the settlement remained in effect.
- (b) The skill, specialized knowledge and responsibility required of the lawyer

- [50] Mr. Boon has been practicing law for 40 years, and practicing in the area of family law for most of that time. Although he has been counsel on a number of high conflict cases over the years, he does not enjoy them. He describes his practice as one where he does not try to get involved in inflaming the dispute between the parties; instead, he stands between the parties' conflict and explains the process to the client. He recognizes that the case belongs to the client, and he takes instructions. He does give advice, if he thinks the instruction is not appropriate. He is very mindful of the cost of litigation, and does not drag things out to increase costs.
- [51] I conclude that Mr. Boon had more than sufficient skill and specialized skill and knowledge to conduct this case, and that he took his responsibilities very seriously.
- [52] Mr. Boon's opposing counsel could be said to have a far more combative nature, as did his client. Mr. Boon was careful throughout to avoid getting entangled in the animosity that his client felt for the opposing counsel, which I find commendable.
- (c) The lawyer's character and standing in the profession
- [53] This is not an issue. Mr. Boon is a member of the Law Society in good standing, and has a good reputation as a senior family lawyer.
- (d) The amount involved
- [54] This legal matter dealt with all the parties' assets and income so it was of great importance to them.
- (e) The time reasonably spent
- [55] Mr. Bell timed himself reading out loud certain emails. He said it took him far less time to read them, than was recorded as billable time by Mr. Boon.
- [56] When a lawyer receives an email and reviews it, there is often more involved than just reading the email out loud. However, I will review each account and see if the contents of the emails that Mr. Bell read and timed are included in the documents submitted during this hearing.
1. Account dated July 23, 2009
- [57] This is the first account that was rendered. It covers the time period from May 26, 2009 to July 22, 2009. It was not included in the appointment, but Mr. Bell requested that it be included in my review of the accounts. Accordingly, it has been entered as the first exhibit in these proceedings, and is being reviewed by me.
- [58] Mr. Boon recorded 6.4 hours for initial communications with the client, reviewing material, drafting a defence and counterclaim, and drafting a financial statement, as well as preparing them for filing and service. I do find this work to be necessary and proper, and the time charged to be reasonable.

2. Account dated November 26, 2009

[59] This account covers the time period of August 17, 2009 to November 24, 2009. Mr. Boon recorded 16.30 hours. During this time Mr. Boon reviewed correspondence and documents, prepared a list of documents, proposed mediation, drafted an offer to settle, and conducted legal research. He had a conference on November 23, 2009 with the client, and attended a judicial case conference and met with the client after. Examinations for discovery were prepared for, and attended at the following day. There was extensive communication to and from the client, but most time entries were recorded as .1 (which is 6 minutes per entry). I find the work necessary and proper, and the time charged to be reasonable.

3. Account dated January 24, 2011

[60] This account covers a very lengthy time period from December 9, 2009 to January 12, 2011. There were only 11.9 hours recorded during this time period. The work was mostly communication to and from the client, and to and from opposing counsel. Settlement proposals were exchanged and responded to. Most of the time recorded is for small units of time. On April 29, 2010, 3 hours was recorded to draft a response to a settlement offer. Again, it is my view that the work was necessary and proper, and time recorded was reasonable.

4. Account dated May 30, 2011

[61] This account covers the time period from April 10, 2011 to May 20, 2011. During this time period 10.8 hours were recorded. I believe the parties' house sold during this time period, and there were numerous emails between counsel and between Mr. Boon and Mr. Bell dealing with the sale of the house, the retention of the balance of net proceeds in trust, and the division of personal property. None of the time entries have been specifically challenged. The recording of time seems to be reasonable.

5. Account dated November 29, 2011

[62] This account covers the time period from May 30, 2011 to November 24, 2011. During this time, 76.5 hours were recorded. A number of emails were exchanged.

[63] This is the time period during which Mr. Bell specifically challenges the time recorded for certain email exchanges. He said that he timed himself reading out loud an email sent on June 7, 2011. Mr. Boon recorded .1 for the receipt of an email. Mr. Bell said that it took 10 percent of that time, and he should only have been charged \$3.50 for the email. It is the practice of lawyers to record in increments of 6 minutes. A time entry of .1 is 6 minutes. It is rare to see a recording in smaller units than that. In the email, Mr. Bell discussed payment of his last account, and attached a spreadsheet listing possessions he received from the house and an estimated value of each item. He complained about that, and about the bill. He directed Mr. Boon to make it clear to opposing counsel that all the expense related to the move will be Mrs. Bell's to bear. He asked for a detailed list from opposing counsel.

- [64] I am surprised that Mr. Boon did not record more time for this email review. It did not take me 6 minutes to read the email either, but Mr. Boon would have had to have opened and reviewed the email as well as the attachment, and then decide what action was required, if any, after receiving the email.
- [65] On June 28, 2011 Mr. Bell sent Mr. Boon a five-page email. He complained about the list of possessions not arriving yet. He resisted producing financial disclosure, and argued that his negotiations be based on his rate of earnings at the date of separation and not his current earnings. He inserted excerpts from opposing counsel's letters in his email, and then his response. Mr. Boon recorded .3 for this. That is 18 minutes. I think this is very reasonable. If he was required to respond or act on the points in this email, he could have recorded twice that amount.
- [66] On August 24, 2011 Mr. Boon recorded 2 hours of time to prepare for a contested spousal support application. He recorded 2.5 hours for attending court to argue the application. Preparation would involve reviewing affidavits and financial disclosure, reviewing legal authorities, and making notes for argument. The 2.5 hours would cover the time from 10 a.m. to 12:30 p.m., which is the time that Mr. Boon was in court. This time was reasonable.
- [67] Larger blocks of time were recorded in October for trial preparation. For example: October 18, 4 hours; October 19, 6 hours; October 20, 8 hours. I take no issue with this block billing for the large task of preparing the case for trial. It is common for a lawyer to spend several days working solely on one file, to prepare it for trial.
- [68] Mr. Bell terminated the retainer with Mr. Boon on November 21, 2011, but Mr. Bell did not sign a notice of intention to act in person, so Mr. Boon still received emails, letters, and a notice of application from Mr. King and he had to deal with them. Until Mr. Bell signed the notice of intention to act in person, I find that Mr. Boon had to perform some services. I will deal with this time further, under the heading "The result obtained".
- (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
- [69] Mr. Boon charges \$325 per hour. I find this to be a reasonable hourly rate for a lawyer with 40 years' experience. Due to an accounting error, the accounts were actually billed to Mr. Bell at a rate of \$350 per hour. This was drawn to Mr. Boon's attention, and he provided a new schedule of accounts reducing the rate to \$325 per hour.
- (g) The importance of the matter to the client whose bill is being reviewed
- [70] There is no doubt in my mind, or Mr. Boon's mind, that this matter was of the utmost importance to Mr. Bell.
- (h) The result obtained

- [71] Mr. Bell was of the view that the result obtained was terrible. Mr. Boon was of the view that it was a very predictable result, and was basically the best that he could have achieved at trial. I have reviewed the facts, and the consent order that was eventually entered in the family file. The settlement was for an equal division of all family assets, including the municipal pension. Each party argued for a reapportionment in his or her favour. Mrs. Bell did so because of her need for self-sufficiency. Mr. Bell did so because some of the money put into family assets came from an inheritance. I do not know when in the marriage this occurred. I have to assume the equal division was a compromise by both parties, recognizing that their competing claims cancelled one another out. The spousal support is essentially what I had ordered in the interim application. The balance of relief seems reasonable to me.
- [72] Mr. Bell said that he did not get one-half of the contents from the home. That may be the case.
- [73] In considering the result I also have to consider the late settlement offer and negotiations on the courthouse step, and whether that contributed to the breakdown of the solicitor/client relationship.
- [74] In July 2011, Mr. Bell asked Mr. Boon if he still wanted to act for him, and if he would be willing to put 100 percent of his effort into defending him. Mr. Boon has a very busy Provincial Court practice in the field of child protection. This requires him to be in court for prolonged trials and applications, and away from the office. He advised Mr. Bell of this, and stated that he might not always be available. Mr. Bell wanted more punctual turnaround from Mr. Boon, but did not choose to change lawyers until he found that the settlement terms were unacceptable to him.
- [75] Mr. Bell also complained that Mr. Boon did not keep him reasonably informed. I interpret this to be the same complaint. There would frequently be long delays between communication, and Mr. Bell was frustrated by this. The most dramatic example is the five-week delay in preparing a settlement proposal, which required extending negotiations into the evening on the last business day before trial.
- [76] Mr. Bell is a very demanding and directive client, who thought that he understood family law. Having read some of his emails and documents, I conclude that he did not. Mr. Boon managed to work with him for two years. He would patiently listen to Mr. Bell bluster, and then he would advise him and explain the law, and eventually he would get reasonable instructions. I surmise that if the negotiations had started earlier, and the orders had been exchanged earlier, Mr. Boon likely would have arrived at wording that would have satisfied Mr. Bell and the solicitor/client relationship could have survived. This is certainly what Mr. Bell wanted. The timing of the negotiations was created by Mr. Boon's lack of availability until the week prior to the trial. Was Mr. Bell put to additional cost as a result of the delay? I would have to conclude that he was, but not a significant amount of additional cost. On reviewing the final account, I have concluded that the time entries between November 18 and November 24, 2011 likely would not have been required if these negotiations had taken

place earlier. I will allow the trial preparation time, because it is reasonable for a lawyer to prepare his case for trial as he is negotiating in the event that the matter does not settle. I order a reduction of 3.2 hours, at \$325 per hour. That equates to a reduction of \$1,040 (plus HST).

Conclusion

- [77] In determining the appropriate fees to be paid by a client to a solicitor for work performed by such solicitor on behalf of a client, a registrar must consider all of the factors set out in the Legal Profession Act. No one factor is more important than any of the others.
- [78] There have been two reductions in Mr. Boon's accounts. One arises because of the accounting error which was not discovered until the first day of the hearing before me. Mr. Boon's office prepared a recalculation of the fees to reduce the billed rate from \$350 per hour to \$325 per hour. The recalculation neglected to adjust the tax, so I have made those further adjustments. Date of account Fees at \$350 per hour (rate billed in error) Fees at \$325 per hour (correct rate) Fees allowed at \$325 per hour Taxes on fees allowed Total fees and taxes allowed
- | | | | | | |
|---------------------|---|--|---|------------|-------------|
| 1 July 23, 2009 | \$2,240.00 | \$2,080.00 | \$2,080.00 | \$249.60 | \$2,329.60 |
| 2 November 26, 2009 | \$5,705 less courtesy reduction of \$905, for a net fee of \$4,800.00 | \$5,297.50 less courtesy reduction of \$905, for a net fee of \$4,392.50 | \$4,392.50 | \$527.10 | \$4,919.60 |
| 3 January 24, 2011 | \$4,165.00 | \$3,867.50 | \$3,867.50 | \$464.10 | \$4,331.60 |
| 4 May 30, 2011 | \$3,780 less courtesy reduction of \$280, for a net fee of \$3,500.00 | \$3,510 less courtesy reduction of \$280, for a net fee of \$3,230.00 | \$3,230.00 | \$387.60 | \$3,617.60 |
| 5 November 29, 2011 | \$26,775 less courtesy reduction of \$1,775, for a net fee of \$25,000.00 | \$24,862.50 less courtesy reduction of \$1,775, for a net fee of \$23,087.50 | \$23,087.50 less taxed off amount of \$1,040.00, for a net allowable fee of \$22,047.50 | \$2,645.70 | \$24,693.20 |
| Totals | \$39,705.00 | \$36,657.50 | \$35,617.50 | \$4,274.10 | \$39,891.60 |
- [79] Fees are allowed at \$35,617.50, plus applicable tax.
- [80] Disbursements were not challenged. Two errors were made on tax calculations on the accounts. I allow the disbursements as billed and described in the following chart. Invoice
- | Date | Disbursements (Including Taxes) |
|----------------------|---------------------------------|
| 104933 July 23, 2009 | \$303.87 |
| 10611 Nov. 26, 2009 | \$47.25 |
| 109516 Jan. 24, 2011 | \$238.84* |
| 111663 May 30, 2011 | \$2.26* |
| 114485 Nov. 29, 2011 | \$237.97 |
| Total: | \$830.19 |
- *error in calculation of taxes on Mr. Boon's accounts
- [81] The only reduction in the amount results from the fee reduction and corresponding reduction in taxes on fees. Interest
- [82] Section 73(3) of the Legal Profession Act provides as follows:
- (3) If a registrar gives a certificate under subsection (2), the registrar must add to the amount certified an amount of interest calculated
- (a) on the amount the registrar has allowed the lawyer for fees, charges and disbursements, exclusive of the costs of the review,

- (b) from the date the lawyer delivered the bill to the date on which the certificate is given, and
- (c) at the rate agreed to by the parties at the time the lawyer was retained or, if there was no agreement, at the same rate the registrar would allow under the Court Order Interest Act on an order obtained by default.
- [83] There was no retainer agreement, and therefore I will allow interest pursuant to the Court Order Interest Act. Costs
- [84] With respect to costs, s. 72 of the Legal Profession Act provides as follows:
- (1) Costs of a review of a lawyer's bill must be paid by the following:
- (a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;
- (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
- (c) a person who applies for a review of a bill and then withdraws the application for a review.
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection. Decision
- [85] I have reduced fees and taxes from \$44,469.60 to \$39,891.60. That is a reduction of \$4,578.00. Disbursements remain the same, with a minor correction to the tax calculation. This reduction is less than one sixth of the account. Most of the reduction was as a result of the fee rate correction, which Mr. Boon conceded to immediately. The only reduction in fees that I granted related to the last week of work on the file. I do not find special circumstances. I award Mr. Boon costs of this review, which I will summarily determine pursuant to s. 72(2) of the Legal Profession Act.
- [86] This review took one full day on December 17, 2012. There was also a prehearing conference on July 10, 2012 for approximately 30 minutes. I determine that \$1,250 in costs should be paid by Mr. Bell to Mr. Boon for this review. This amount should be set-off against the fee reduction Mr. Bell has received. "Master B.M. Young"

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