

CANADA / JUDGMENT

Sinclair v. Hallam

2003 BCSC 385

COURT

Supreme Court of British Columbia

DECIDED

24 February 2003

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Source record

2003BCSC0385

Citation: Sinclair v. Hallam

Date: 20030224
2003 BCSC 385Docket: 27754
Registry: Registry
IN THE SUPREME COURT OF BRITISH COLUMBIABETWEEN: GLENN B. SINCLAIR
SOLICITORAND: PHILLIP GEORGE ANTHONY HALLAM
CLIENT

REASONS FOR DECISION

BY

MASTER J.W. HORN

AS REGISTRAR

Glenn B. Sinclair

Appeared on his own behalf

Paul L. Parsons

Appeared on behalf of the client

Date and Place of Hearing/Trial:

Nanaimo, British Columbia

October 22nd, 23rd, 25th, and November 13th, 2002

- [1] This was an appointment taken out by the client, Phillip Hallam, on May 23rd, 2000 to review the bill of the solicitor, Glenn Sinclair, which is dated February 25th, 2000. The whole amount of the bill, which was \$72,702.61, and the amount of \$2,751.34 owing on a previous bill, was paid from monies transferred from trust which were received on behalf of the client in settlement of the matrimonial action in which Mr. Sinclair had been engaged. After that transfer and at the request of the client, Mr. Sinclair reduced the bill by a further \$3,000 and refunded that sum to the client so that the total bill is \$69,702.61. That includes interest of \$20,733.
- [2] It was objected that the document was not a bill because it was not signed by or on behalf of Mr. Sinclair, nor accompanied by a letter signed by or on behalf of Mr. Sinclair. But the only consequence of that, it seems to me, would be that the bill could not be sued upon by, or reviewed at the instance of the lawyer. Since this bill is being reviewed at the instance of the client, I hold that the lack of signature is an irregularity which the client has waived.
- [3] The bill is for work done between November 3rd, 1997 and February 23rd, 2000. Some previous work had been done by Mr. Sinclair for Mr. Hallam between June and November 1997 under the same retainer and for which he was billed. Four bills were rendered for that work for a total of \$5,296.05. Those bills, except for some part of the last bill, were paid on receipt.
- [4] Mr. Hallam was a family man and after a long marriage, he separated from his wife on December 1st, 1996. Mrs. Hallam remained in the family home which was mortgage free. Their two children were old enough to determine their own custodial arrangements and Mr. Hallam voluntarily paid child support, or wages, directly to his children. Questions of custody, access and child support were never an issue between the parties. At issue were spousal support and division of family assets.
- [5] Initially Mr. Hallam made voluntary spousal support payments to Mrs. Hallam which, by the time he consulted Mr. Sinclair, had been reduced by him to \$1,100 per month.
- [6] In February of 1997, Mr. Hallam retained Mr. Boyd Hiltz of Duncan. On his behalf, Mr. Hiltz issued a Petition for Divorce and corollary relief, prepared a Property and Financial Statement, prepared a List of Documents, sought and obtained an interim Order restraining Mrs. Hallam from disposing of family assets, obtained an Order on June 18th, 1997 declaring that the parties had no reasonable prospect of reconciliation, and arranged with Mr. Considine, acting for Mrs. Hallam, for mediation to take place on July 2nd, 1997.
- [7] Mr. Hallam first saw Mr. Sinclair on June 13th, 1997. He says that he consulted Mr. Sinclair for a second opinion to see if the procedures adopted by Mr. Hiltz were "on track" and whether the offer which was going to be presented on his behalf to the mediator was appropriate.

- [8] On June 12th, 1997, in preparation for this appointment, Mr. Sinclair had his secretary prepare a letter [Tab 15 of Exhibit A] which was a generic letter given to all family law clients setting out the general requirements as to financial disclosure and information as to support and custody issues and as to property division.
- [9] On June 13th, Mr. Sinclair conducted a long interview with Mr. Hallam and obtained a great deal of information which he embodied in a memorandum to file, a part of which can be found at Exhibit A, Tab 16. He records in that memorandum that Mr. Hiltz had a tentative appointment for the 4th of July to begin mediation and that Mr. Hallam was of the opinion that it might not work because his wife was pretty difficult to deal with.
- [10] The memorandum has no indication that Mr. Sinclair was being asked for a second opinion. What is clear is that it was agreed that Mr. Hallam should complete the mediation process and advise Mr. Sinclair of its results.
- [11] On July 4th, 1997, Mr. Hallam called Mr. Sinclair and reported that after four hours of mediation, no settlement had been achieved and that what had been offered to Mrs. Hallam on his behalf was the house, \$4,000 worth of R.R.S.P.'s, no division of pension, and no maintenance.
- [12] The position of Mrs. Hallam had been set out in a letter to the mediator by Mr. Considine dated June 30th, 1997 [Exhibit 26]. In it, he asserts that Mr. Hallam's business had a value in excess of \$200,000. He proposed that Mrs. Hallam would accept the sum of \$2,000 a month for her own support.
- [13] The point which the parties had reached when the mediation was suspended is set out in a report by the mediator, Gordon Sloan, of July 4th, 1997 [Exhibit 24]. The question of maintenance for Mrs. Hallam was not settled by the mediator but it appears that she was then proposing a one-time lump sum payment of spousal maintenance of \$6,000 and Mr. Hallam was, instead, willing to pay \$6,000 to reduce joint Visa and Mastercard debts.
- [14] After the mediation, Mr. Hiltz was discharged by Mr. Hallam and his fees of \$8,438.54 were paid. Mr. Sinclair was then engaged. Some time subsequently, Mrs. Hallam discharged Mr. Considine and engaged Mr. Vining.
- [15] Mr. Sinclair saw Mr. Hallam next on July 29th at which time, he reviewed the file and updated the memorandum which he had dictated on June 13th.
- [16] It is Mr. Sinclair's practice to dictate memoranda of facts and instructions in the presence of the client during an interview. He does so, he says, because corrections can be made on the spot and gaps can be filled without an exchange of correspondence or phone calls. Mr. Hallam complained that he spent hours with Mr. Sinclair listening to him dictate. Since Mr. Sinclair would have dictated the memorandum whether Mr. Hallam was there or not, I do not find that there is anything inefficient about this practice and it has much to commend it.

- [17] It was on July 29th that Mr. Sinclair was retained on the matter and he subsequently filed a Notice of Change of Solicitor.
- [18] On August 13th he again saw Mr. Hallam, reviewed the file, and dictated an up-date of his earlier memorandum. It was on this visit that Mr. Hallam was given a retainer agreement prepared in advance. It is Mr. Sinclair's standard form of family law retainer agreement. His evidence was that every file which is opened has the standard fee agreement, and the instruction letter previously referred to, ready for presentation to the client. Mr. Sinclair says that his practice is to tell the client to go away and look at the agreement and the letter, and he does not spend a great deal of time discussing them. He says that he usually does advise the client that he charges a lower hourly rate than other lawyers in Nanaimo but that he charges for all of his staff time. He says that he usually tells the client to read the remainder of the provisions of the agreement away from the office before he or she signs it.
- [19] Mr. Hallam did sign the retainer agreement though when and where he signed it is a matter of dispute. It is only of importance because Mr. Hallam says that he did not receive by mail or otherwise a copy of the agreement which he signed. There is no reason why he should not have been given a copy.
- [20] A signed original of the agreement dated the 13th of August 1997 was produced by Mr. Sinclair as Exhibit 1. It does not have the word "copy" stamped on it. Produced by Mr. Hallam in Exhibit A, Tab 6 is what appears to be a photocopy of that agreement with the word "copy" stamped on it and at Tab 7 is another original agreement with an original signature by Mr. Hallam and a sticky marked "sign here" below his signature. One of these documents, I conclude, was left in from Mr. Hallam's possession. I conclude that he did receive a copy.
- [21] In any case, Mr. Hallam thereafter received monthly work in progress statements headed "Work Performed to July 31, 1997", or as the case might be, and could observe what work was done and what charges were being made and by whom, and he did not object to the method of charging, though he did voice concern over the mounting total.
- [22] In October, Mr. Hallam approached Mr. Sinclair and said that he could not afford to pay the mounting bills and asked to enter into a different arrangement. Mr. Sinclair agreed that he would not press for payment of monthly bills and would adopt what is, for him, a normal procedure, which is to send out, not a bill, but a monthly statement of work in progress to the client. This saves Mr. Sinclair having to pay PST and GST until such time as a final bill is rendered. In return for not receiving payment for monthly bills, he charges interest at 2% per month. That is provided for in s.4.2 of the fee agreement.
- [23] The work in progress reports are cumulative and give the client each month a complete view of what work has been done from beginning to end and how much the litigation is costing the client. Mr. Hallam agrees that he received these monthly statements but says he ceased to read them after a while and sometimes did not even open them.

- [24] Mr. Sinclair says that he discussed with Mr. Hallam the fact that interest would be accumulated on the monthly statements. These interest charges can be found under the heading "Disbursements". Mr. Sinclair says that he explained to Mr. Hallam, as he does to all of his clients, that if at the end of the retainer, he decides to reduce the bill, he would reduce the fees but not the interest portion of the bill. Since GST and PST are not chargeable on fees but not on interest, there is an advantage to him and the client in doing so.
- [25] This is perhaps a rather sophisticated concept and it seems to me that Mr. Hallam did not fully understand it. He said that whenever he raised the question of interest, Mr. Sinclair would tell him not to worry, and that he would not charge interest when it came to settling the final bill. Whether there was a misunderstanding or not, does not really matter because, in fact, Mr. Sinclair reduced his final bill by \$14,020.74 on February 25th which was, he says, roughly the amount of the interest charged. The actual interest component of the bill was \$20,739.82.
- [26] It was argued that no interest should have been charged upon fees for which a bill had not been rendered. The retainer agreement, however, provides in section 4.2(a) that interest will be charged on "work in progress reports" and a note to that effect was endorsed upon each work in progress report.
- [27] In the end, the fees logged were \$52,536 and Mr. Sinclair and his assistants had, between them, logged 413 hours on the file. The fees portion of the bill was finally reduced to \$38,515.26.
- [28] The total bill then presented including GST and PST on fees, disbursements, interest and GST on disbursements, was \$72,702.61 to which was added the balance on the bill of December 5th, 1997, less \$500 paid on that bill, for a grand total of \$75,453.95. As previously stated a reduction of \$3,000 was earlier made, for a grand total of \$72,453.95.
- [29] There is no dispute over the amount of time recorded by Mr. Sinclair and by his legal staff, nor is there any dispute as to the disbursements.
- [30] The real issue before me is whether this is a proper bill for fees, taking into account the matters which are set out in section 71(2) to (5) of the Legal Profession Act.
- [31] Section 71(5) provides that my discretion is not limited by the terms of an agreement between the lawyer and the lawyer's client. On the other hand, such an agreement is an important factor.
- [32] The agreement here has been proved and is reasonable. The fees asked by Mr. Sinclair were, for a person of his standing in the profession, reasonable. The system which he adopts of charging all his secretarial time is not objectionable in light of the fact that he charges for his own time a lower hourly rate than other practitioners in the Nanaimo area who engage in the same field of law.

- [33] But time expended is, of course, not everything and I must have regard to the other factors set out in s.71(2) to(4).
- [34] To assist me, I was provided with a letter of opinion by Ms. Trudi Brown, Q.C., an experienced practitioner in the field of family law. That opinion can be found at Tab 5 of Exhibit A. Mr. Sinclair did not wish to cross-examine Ms. Brown on her opinion. She concluded from a review of the file that this was an "ordinary family law file" with modest assets and an issue with respect to spousal support. I agree with that statement. Custody and access were not an issue. The real issue was whether Mrs. Hallam should continue to receive spousal support. The assets, according to Mrs. Hallam [Exhibit 6] were, at most, \$354,231, not including pensions.
- [35] Spousal support was undoubtedly an important issue and potentially a "big ticket item". But it was no more intractable a problem than is presented in any case where one partner has no income due to having withdrawn from the work force for child raising duties, or due to ill health. It was a negotiable item. Before Mr. Sinclair took over the file, it appeared that Mrs. Hallam might be prepared to accept a one-time lump sum payment in lieu of maintenance.
- [36] As to the assets, what needed to be dealt with promptly was the value of the unencumbered house and the value, if any, of Mr. Hallam's incorporated company, Anvil Enterprises Ltd. Since Mr. Hallam operated this as a one-man company for the purposes of doing saw filing for private clients, the value of the company, on the face of it could only have been the value of its hard assets, if any, since if Mr. Hallam chose not work through the company any longer, it would have no further income.
- [37] Apart from that, all the assets were known and the values were known or readily ascertainable.
- [38] By March 1998, Mr. Sinclair had obtained an opinion from the accountants who prepared Anvil Enterprises' books which opined that the company had no assets of any value and a very modest income and that the market value was nil. At a later stage, a firm of accountants engaged by Mrs. Hallam gave a much higher value, but based on the assertion that these existed. These were however of questionable value and ownership.
- [39] An issue had arisen in Mr. Hallam's mind as to whether Mrs. Hallam was the beneficial owner of some property jointly held by herself and her father, Mr. Kelly. A letter from Mr. Richard Wright, a notary public who had executed the transactions whereby Mrs. Hallam had acquired her half interest in the property and later surrendered it, made it clear that she had no beneficial interest in the property but had been put on title as a means of reducing the value of his estate upon her father's death. Despite this, Mr. Kelly was joined as a party and was examined for discovery. Eventually a consent order was entered dismissing the action against him with costs. This was, I conclude, an unnecessary procedure and expense.

- [40] Ms. Trudi Brown concludes, and I agree with her, that in view of the modest assets and modest spousal support claim, far too much time was spent in client consultations and examinations for discovery. There were a number of court applications for interim relief and a number of appearances to settle Orders. Whether these applications should have been contested is doubtful, and why they were not settled is not clear.
- [41] Mrs. Hallam applied for child and spousal maintenance in December 1997. In reply, Mr. Hallam contested the application and sought an order for sale of the five-bedroom family home. His application was dismissed. It cannot be said that the application had no prospect of success but since the home was debt-free and not a drain on income, and Mrs. Hallam and at least one of the children were living in the home, the application could not be said to be bound to succeed.
- [42] Discoveries commenced in May of 1998 and continued in January 1999, July 1999 and January 5th, 2000. Granted that settlement discussions were taking place during the breaks, it is still difficult to understand how four days of discovery could have been considered essential where so few issues were in dispute.
- [43] Ms. Brown further comments, "There is nothing I can see in the correspondence to show any form of planning or any suggestion to Mr. Hallam about what he might expect to get at the end of the day after negotiations, nor were there any letters setting out what the costs might be of any specific applications (of which there were many) to the Court. I could see nothing in the file that proposed mediation, although there was an attempt at mediation prior to Mr. Sinclair being involved. There appears to be no analysis of legal costs of the proceeding versus the benefit or risk analysis of settling early."
- [44] I agree with all of these remarks. Having heard Mr. Sinclair's evidence and the evidence of Mr. Hallam, I am left with the strong impression that this action wound its way to a conclusion over a period of two and one-half years without an evaluation of prospects of recovery or any cost analysis being provided to Mr. Hallam. That is not to say there were not offers to settle; there were numerous offers exchanged but it was not until the eve of trial that a settlement was recommended by Mr. Sinclair and then it was on the basis that the trial was about to commence and the fees for trial would be very high, Mr. Hallam decided that he could not afford these fees, and so settled.
- [45] By that settlement, Mr. Hallam was to pay \$1,500 per month for spousal maintenance for a period of about seven months. He was to transfer his R.R.S.P.'s having a value of \$4,295. Mrs. Hallam was to retain sole ownership of her R.R.S.P.'s with a value of \$17,244. Mrs. Hallam was to transfer to Mrs. Hallam his entitlement in the former matrimonial home in return for a sum of \$80,000 (the matrimonial home was valued in the area of \$160,000 - \$240,000). Mrs. Hallam gave up any right to or claim to Anvil Enterprises. The parties were jointly given conduct of sale of the boat and motor and each was to retain the vehicle and chattels that were in their possession. The I.W.A. pension was to be divided in accordance with the regulations. All arrears of spousal maintenance were to be paid from the \$80,000. The costs

payable to Mr. Kelly were to be deducted from the \$80,000.

[46] In the end, once the arithmetic was done and the set-offs ascertained, Mr. Sinclair reduced his bill to the exact amount remaining of the cash component of the settlement.

[47] In total, then, the amount which this result cost Mr. Hallam in legal fees and disbursements is as follows:

Paid to Mr. Hiltz \$ 8,438.54

Paid Mr. Sinclair's four bills

from June 13th, 1997 to

October 23rd, 1997:

\$ 5,296.05

Paid Mr. Sinclair's reduced

Bill of February 25th, 2000: \$69,702.61

\$83,437.20

[48] I turn now to consider the elements of section 71(4) of the Legal Profession Act as follows.

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

[49] There were no complex, difficult or novel issues involved. This was an ordinary family law action for spousal support and division of assets. Custody was not involved, child support was all but agreed, Mrs. Hallam had no income but there was a medical question as to whether she would return to work in the future or would be entitled to some Workers Compensation before she returned to work. Mr. Hallam's employment income was not difficult to ascertain. His income from his business was more difficult to ascertain but only because, as is common, he was charging expenses to the business which were in essence personal. Furthermore, Mrs. Hallam suspected that he might not be putting all his income through the company books. The value of the assets were not difficult to obtain except for the value of his business and the chief difference there was whether the business had assets of its own or whether the assets that were being used were the property of some other person. On this issue, the opinion of accountants was obtained by each side and no issues of any complexity emerged from their reports.

[50] The claim to relief against her father, Mr. Kelly, was, at best, a shot in the dark and Mr. Hallam should have been told so, or told the expense of joining Mr. Kelly.

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

- [51] Mr. Sinclair is a very experienced family lawyer and he addressed all the issues in the litigation. The resolution of the issues did not, however, require the services of a very experienced lawyer. The amount at issue was not great and accordingly, the responsibility was not great.
- (c) the lawyer's character and standing in the profession:
- [52] Mr. Sinclair has practised family law for a long period and is of good standing and repute.
- (d) the amount involved:
- [53] The assets, as I have said, were not great and the spousal support claim was modest, considering Mr. Hallam's income.
- (e) the time reasonably spent:
- [54] I conclude that too much time was spent in client consultations and upon discoveries. I take into account Mr. Sinclair's evidence that Mrs. Hallam was a very difficult party to examine in that she was unresponsive.
- (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
- [55] I have already said that the charges per hour, including secretarial charges, were reasonable given Mr. Sinclair's experience.
- (g) the importance of the matter to the client whose bill is being reviewed:
- [56] This matter was very important to Mr. Hallam.
- (h) the result obtained:
- [57] The result represented a compromise reached because the expense of continuing to trial was too great. Mr. Hallam received a smaller percentage of the family assets in return for which Mrs. Hallam gave up long term spousal support. It is not a victory for Mr. Hallam.

CONCLUSION

- [58] I determine that the account for fees was too large taking into account all of the above factors, and taking into account both the bill being reviewed and the five interim bills.
- [59] Ms. Brown is of the opinion that a reasonable amount of time to have spent on this file by Mr. Sinclair would have been one hundred hours and that in addition, a charge for secretarial time of \$5,000 would have been reasonable, for a total of \$23,000.
- [60] Although these matters cannot be approached mathematically, my approach is as follows. The total fees recorded on the bill of February 25th, before discount, were \$52,536.00 413 hours of lawyer and secretarial work combined were recorded, which is an average of roughly \$127 per hour. In my view, about one-half the total time that was recorded should have been spent and that a fee of \$26,000 would have been appropriate. To that, GST and PST

must be added, for a subtotal of \$29,640 and disbursements of \$7,631 for a total of \$37,271. But in addition to this, interest must be added. It was bargained for, and Mr. Sinclair carried this file for two and one-half years without payment, by reason of that bargain.

- [61] The total interest which was charged for fees and disbursements of \$51,969.00 was \$20,733, which is about 40%. Over 28 months that is about 17% per year. That does not seem an unreasonable interest rate and is less than bargained for. If I added 40% to allowable fees and disbursements of \$37,271, the total is \$52,179.40.
- [62] I allow fees, disbursements and interest of \$52,179.40. What was received by Mr. Sinclair (excluding the net payment on his previous bill) was \$69,702.61. That results in a difference of \$17,523.21. That sum shall be repaid, together with interest at Registrar's rates from February 25th, 2000, until date of payment.
- [63] More than 1/6th of the bill has been taxed off, and accordingly, the party/party costs of this assessment, on Scale 3, must be paid by Mr. Sinclair.

"Master J.W. Horn as Registrar"

March 12, 2003 -- Corrigendum to Reasons for Decision issued by Master J.W. Horn as Registrar advising that the citation and date of filing were inadvertently omitted in the typing of this decision. The citation for the Reasons for Decision is the same as that which appears in the corrigendum.

March 20, 2003 -- Corrigendum to Reasons for Decision issued by Master J.W. Horn as Registrar advising that an error has been noted by counsel in the dates of the hearings held in this matter. The dates which appear on this corrigendum are the correct dates, namely, October 22, 23, 25, 2002, and November 13, 2002.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/03/03/2003bcsc0385.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sinclair-v-hallam-2003>

Prepared on 29 October 2026 · Esheria