

CANADA / JUDGMENT

Skidders v. Hartshorne

2024 BCSC 1924

COURT

Supreme Court of British Columbia

DECIDED

18 October 2024

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2024 BCSC 1924 Skidders v. Hartshorne

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skidders v. Hartshorne,

2024 BCSC 1924

Date: 20241018

Docket: S240512

Registry: Vancouver

Between:

Kenniihontaah Skidders

Client

And

Hartshorne & Mehl

Solicitor

Before: Registrar Gaily

Reasons for Decision

Counsel for the Client:

R. Marcoux

Counsel for the Solicitor:

P. G. Kent

Place and Date of Pre-Hearing Conference:

Vancouver, B.C.

June 24, 2024

Written Submissions of the Client:

Written Submissions of the Solicitor:

September 12, 2024

August 9 & 29, 2024

Place and Date of Decision:

Vancouver, B.C.

October 18, 2024

Introduction

- [1] In this proceeding commenced under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA], Kenniiohontaah Skidders (the "Client") retained Hartshorne & Mehl (the "Law Firm") under a contingency fee agreement dated September 12, 2018 (the "CFA"), to represent her in an action seeking damages for personal injuries she sustained in a motor vehicle accident (the "MVA Action"). The solicitor-client relationship between the Law Firm and the Client ended in September 2021. Pursuant to the terms of the CFA, the Law Firm delivered the Client a bill dated September 17, 2021, for the disbursements it had incurred on her behalf (the "Disbursement Bill"), which she paid. The Client continues to be represented by counsel in the pursuit of her MVA Action, however, the MVA Action has not concluded, either at trial or through settlement (and I am not aware that it had concluded by the time I received written submissions from the parties).
- [2] On January 25, 2024, the Client filed an appointment pursuant to the LPA, against the Law Firm, scheduling a pre-hearing conference ("PHC") before the registrar for March 11, 2024. The parties adjourned this PHC by consent. On April 3, 2024, the Client filed a second appointment under the LPA in the same file for a PHC on June 24, 2024, indicating (as she did on the first appointment) that she seeks a "review of the bill of [the Law Firm] (not provided to date)" (my emphasis), an examination of the CFA (a copy of which is attached to the appointment), and a review of the disbursements charged by the Law Firm. In this decision, I refer to both the January 5 and April 3 appointments together as the "Appointment".
- [3] At the PHC before me on June 24, 2024, among other things, the Client's counsel, Robert Marcoux, asked me to make several orders, including the following:

- That the Law Firm "confirm if they are alleging they terminated the [CFA] with [the Client] for reasons set out in A-D of the [CFA]"; and
 - That the Law Firm produce an account as contemplated by the CFA and s. 69 of the LPA, "namely, an account that [the Law Firm] consider reasonable for the work performed that includes a reasonably descriptive statement of who performed the services, including the time expended in performing the services, with hourly rates for the time charged for each service."
- [4] The Law Firm maintains that the Appointment seeking to review their fees for legal services under the CFA has been filed prematurely in the circumstances and that the registrar does not have jurisdiction to make the above orders sought by the Client at the PHC. The Law Firm also submits that the limitation periods set out in the LPA to review the CFA and the Disbursement Bill expired prior to the filing of the Appointment.
- [5] Section 77 of the LPA expressly provides that, on an application by a person charged (in this case, the Client), "the court may order delivery of a bill to the person charged if a bill has not been delivered and the bill, if it had been delivered, could have been the subject of an application for a review under section 70" (emphasis added). At the PHC, the Client's counsel advised they had not pursued such an application because the contingent event for which the Client had retained the Law Firm had not yet occurred. For the reasons that follow, I have determined that in the circumstances, the filing of the Appointment seeking to review legal fees under an account that has not been rendered because the contingent event has not occurred, is premature. Further, I have determined that the legislative scheme does not afford the registrar at a PHC the jurisdiction to order the Law Firm to declare that its position is the Client terminated the CFA (which I consider an issue for the review hearing) or to order the Law Firm to produce a bill for its legal fees.
- [6] I also agree with the Law Firm that the limitation periods set out in the LPA to review the CFA (s. 68(3)) and the Disbursement Bill (s. 70(1)) expired prior to filing the Appointment. In my view, the law is clear that without an order of the court under s. 70(11) of the LPA, the review of the CFA and the Disbursement Bill would be a nullity.

Background

- [7] The following background summary is to provide context and is based on the parties' submissions (the parties did not tender any affidavits at the PHC).
- [8] As noted, the Client retained the Law Firm to represent her pursuant to the CFA, which the Client signed on September 12, 2018. The lawyer with conduct of the Client's file was Mark G. Carter and he signed the CFA on behalf of the Law Firm on September 17, 2018.

- [9] There is no dispute that Mr. Carter left the Law Firm in September 2021 and that he now practices at DuMoulin Boskovich LLP ("DB"), which is also where Mr. Marcoux practices. With its written submissions, the Law Firm provided copies of the notices of address for service, which Mr. Carter filed on September 29, 2021 and October 5, 2021 in the Client's MVA Action and Part 7 Action respectively, providing his new address at DB (the "Notices").
- [10] Both parties agree that the solicitor-client relationship between the Law Firm and the Client ended in September 2021 when Mr. Carter left the Law Firm. Both parties agree that the Law Firm delivered the Disbursement Bill to the Client and that she has paid the Disbursement Bill.
- [11] The parties disagree about who is responsible for terminating the solicitor-client relationship.
- [12] Mr. Marcoux asserts that the Law Firm unilaterally terminated the solicitor-client relationship with the Client when the Law Firm terminated Mr. Carter's employment. He denies that the Client terminated the solicitor-client relationship and submits that the Client "does not recall receiving a letter from the Law Firm giving her an opportunity to stay with the Law Firm, to transfer her file to Mark Carter, or the opportunity to choose another lawyer" and that she "does not recall terminating the [CFA] with the Law Firm." He asserts that the Client is "caught up in the legal dispute" between the Law Firm and Mr. Carter, in which she "feels like a pawn".
- [13] The Law Firm submits that Mr. Carter would not have filed the Notices without the Client's knowledge and consent. The Law Firm submits that it has no obligation to send a letter to the Client, referring to Law Society commentary that no such letter is required "if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm." The Law Firm submits that they are "confident that the exchange of correspondence between Mr. Carter (who left the firm of Hartshorne & Mehl with files as agreed between Mr. Carter and the [Law Firm]) will demonstrate the falsity" of the Client's allegations that the Law Firm "dumped the Client" and treated her like "chattel that can be traded or sold" (referring to the Client's submissions).
- [14] There was no evidence before me from the Client, Mr. Carter or the Law Firm to substantiate the parties' submissions.
- [15] Prior to the PHC, Mr. Marcoux had provided counsel for the Law Firm, Paul G. Kent, a written outline (effectively, written submissions) to support the orders he was seeking at the PHC. In response, Mr. Kent prepared a book of authorities supporting his position that the Appointment was premature and the registrar lacks jurisdiction to make the orders sought.
- [16] The parties provided the written outline and authorities to me at the PHC (they were not filed in advance in a hearing record). A hearing record is not required for a PHC under the Supreme Court Civil Rules [SCCR or the Rules], but it would have been helpful if the parties

had filed one, particularly where legal arguments about jurisdiction are raised. Despite my skepticism, Mr. Marcoux strenuously argued that the registrar has jurisdiction to make the orders he seeks, in particular, that the registrar has the power to order the Law Firm to produce a bill for the legal services it provided to the Client under the CFA (but he did not produce the authority or a precedent for such an order).

- [17] Further, because Mr. Marcoux advised that he had filed several appointments under the LPA seeking similar orders at PHCs set over the upcoming weeks (which dates he agreed to release), I directed the parties to provide written submissions supporting the arguments made at the PHC so that I could provide written reasons. In particular, I asked the parties to address the registrar's jurisdiction to make the orders Mr. Marcoux seeks at a PHC, that is, to order the Law Firm to advise if it terminated the CFA or if the Client did, and to order the Law Firm to prepare and provide a bill. I directed the parties to file their written submissions, not to exceed 15 pages, according to the following schedule: the Law Firm was to file its submissions by August 9; the Client was to file her response submissions by August 23; and, if necessary, the Law Firm could file a reply not to exceed five pages, by August 30. I received a filed copy of the Law Firm's submission on August 9, together with a book of authorities, and I received a filed copy of the Law Firm's reply to the Client's response submissions on August 29. The Client did not file written submissions by August 23, although it was clear that they were provided to Mr. Kent, given the Law Firm's reply. When this oversight was brought to Mr. Marcoux's attention, he filed the Client's written submissions on September 12, but he did not provide a book of authorities.

Discussion

- [18] It is well established that the registrar of the Supreme Court, who is appointed under the Supreme Court Act, RSBC 1996, c 443 [SCA], has limited jurisdiction and may carry out only those duties assigned to a registrar by the Rules and under any other enactment (SCA, s. 13(2)).
- [19] Associate Judges may exercise the powers granted to the registrar under an enactment or the SCCR (SCA, s. 11.3(3) and R. 23-6(2)), but the SCA and the SCCR do not grant registrars the same powers as associate judges and when associate judges conduct registrars' hearings, they do so as a registrar.
- [20] The limited jurisdiction of the registrar is further reflected in the definition of "court" set out in R.1-1(1), which provides that in the SCCR, "unless the context otherwise requires", "court" "means the Supreme Court of British Columbia and, if an associate judge has jurisdiction, includes an associate judge of the Supreme Court." Although the definition of court under the Rules includes associate judges, it does not include a registrar. The definitions applicable to Part 8 of the LPA ("Lawyers' Fees") also exclude a registrar from the definition of the court: in s. 64(1) of the LPA, "court" means the Supreme Court and "registrar" means the "registrar of the court".

- [21] The exclusion of the registrar from the definition of "court" leads to the inference that the legislature deliberately intended the exclusion (see Ruth Sullivan, Sullivan on the Construction of Statutes, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at 248 [Sullivan]).
- [22] There is no dispute that the Client filed the Appointment under s. 70 of the LPA (the Client's response submissions expressly state that the Client "is seeking a review under s. 70 as opposed to a review of the reasonableness [of the CFA] under s. 68"). The Client submits that sections 69 and 70 of the LPA must be read together (citing Farris & Company v. Strother, 2010 BCSC 1517 [Farris v. Strother], where at para. 26, Justice Willcock (as he then was) accepted the client's submission that s. 70 of the LPA "must be informed by the statute as a whole and s. 69 in particular").
- [23] Section 70 of the LPA governs the review of a lawyer's bill and provides that, subject to s. 70(11), the person charged "may obtain an appointment to have a bill reviewed before (a) 12 months after the bill was delivered under section 69, or (b) 3 months after the bill was paid, whichever occurs first." Section 70(2) provides that the person "who obtained an appointment under subsection (1) for a review of the bill must deliver a copy of the appointment to the lawyer at the address shown on the bill, at least 5 days before the date set for the review "
- [24] Under s. 69(1) of the LPA, a lawyer "must deliver a bill to the person charged". As has been noted, s. 69(1) of the LPA requires a lawyer to deliver a bill, but it does not specify the timeframe (see Bayshore Law Group v. Kursar, 2019 BCSC 923, para. 30). The other provisions of s. 69 are not relevant to the issue before me.
- [25] The procedure set out in the SCCR "for the assessment of costs, review of bills and examination of agreements" applies to reviews of lawyer's bills under s. 70 of the LPA, as is expressly set out in s. 70(13). The following provisions of Rule 14-1, which governs costs, apply:

Appointment to review a bill, examine an agreement or assess costs

- (21) Except as provided in subrule (26), a person who seeks a review of a bill or an examination of an agreement under the Legal Profession Act or who seeks to have costs assessed must
- (a) obtain a date for an appointment before a registrar,
 - (b) file an appointment in Form 49 to which is attached
 - (i) the bill to be reviewed,
 - (ii) the agreement to be examined, or
 - (iii) the bill of costs to be assessed, and

- (c) at least 5 days before the date of the appointment, serve a copy of the filed Form 49 appointment and any affidavit in support,
- (i) in the case of a bill to be reviewed, on the lawyer whose bill is to be reviewed, on the person who is charged with the bill or on the person who has agreed to indemnify the person charged, as the case may be,
- (ii) in the case of an agreement to be examined, on the lawyer who is a party to the agreement to be examined, or
- (iii) in the case of a bill of costs to be assessed, in accordance with subrule (25).

Place for review or examination

- (22) An appointment for review of a bill, examination of an agreement or assessment of costs must be taken out,
 - (a) in the case of a bill to be reviewed or an agreement to be examined,
 - (i) if the bill or agreement relates to a court proceeding, at the registry at which the proceeding is being conducted, or
 - (ii) if the bill or agreement does not relate to a court proceeding, at the registry nearest to the place of business of the lawyer concerned,
 - (b) in the case of a bill of costs to be assessed, at the registry at which the proceeding is being conducted, or
 - (c) at any other registry to which the parties to the appointment may agree.

Further particulars

- (23) A registrar may order further particulars or details of
 - (a) a bill under review,
 - (b) an agreement under examination, or
 - (c) a bill of costs being assessed.

[26] The Law Firm maintains that an appointment to review a lawyer's bill under s. 70 of the LPA "presupposes the existence of a bill to be reviewed" when the relevant legislative provisions and the Rules are read together. In particular, the Law Firm submits that the use of the word "must" in R. 14-1(21)(b)(i), which provides that "a person who seeks a review of a bill ... under the [LPA] must ... file an appointment in Form 49 to which is attached the bill to be reviewed", means that attaching a bill to the appointment is mandatory. The Law Firm relies on s. 29 of the Interpretation Act, RSBC 1996, c. 238 [Interpretation Act], which says that in an enactment, "must" "is to be construed as imperative". The SCCR are regulations and are an "enactment" to which the Interpretation Act applies (see s. 1, Interpretation Act, definition of "enactment").

- [27] I agree with the Law Firm's interpretation of the Rules, that is, that a bill must be attached to an appointment seeking a review of a bill under s. 70 of the LPA.
- [28] The Law Firm submits that because the Client's Appointment does not attach a bill to be reviewed, the Appointment does not comply with the LPA and R. 14-1(21), which compliance is "required for the registrar to have jurisdiction and commence any registrar's hearing." The Law Firm submits that to overcome the hurdle that the Appointment does not comply with R. 14-1(21) and the LPA, the Client seeks an order from the registrar at the PHC compelling the Law Firm to create and issue a bill prior to the commencement of the hearing, which the Law Firm submits the registrar does not have jurisdiction to do.
- [29] The Client acknowledges that it has not attached a bill from the Law Firm because the Law Firm has not delivered one, (the contingent event not yet occurring), but submits that this should not preclude the Client from seeking to review the Law Firm's fees and that if a lawyer has not prepared a bill, "it must be the Registrar who directs the lawyer to prepare a bill, and it must be done at a [PHC]." In the Client's response submissions under the heading "jurisdiction of the registrar to order a lawyer to prepare a bill vs jurisdiction to conduct a review without a bill from the lawyer", the Client relies on two cases: Nathanson Schachter Thompson v. Levitt, 2007 BCSC 65 [NST v. Levitt], and Kelly v. McMillan and Harbottle & Co, 2003 BCSC 307 [Kelly v. McMillan]. In my view, neither of these cases assists the Client in establishing the registrar's jurisdiction in the circumstances before me.
- [30] Kelly v. McMillan involved a dispute about fees owing to lawyers the client, Mr. Kelly, had retained in succession to pursue his personal injury actions. Mr. Kelly initially retained Mr. Prodor, but terminated the retainer after nearly two years to hire Ms. McMillan under a contingency fee agreement. After approximately five months, Mr. Kelly terminated the retainer with Ms. McMillan and returned to Mr. Prodor. Mr. Justice Goepel (as he then was) heard the appeal by both parties from the registrar's determination of Ms. McMillan's fees. Goepel J. set out the history of proceedings between the lawyers over the fees owing to Ms. McMillan, which are clearly distinct from the situation before me.
- [31] When Mr. Kelly re-retained Mr. Prodor, Ms. McMillan claimed a solicitor's lien based on a lump sum account provided to Mr. Kelly, whereupon Mr. Prodor filed a petition seeking several orders, including the release of Ms. McMillan's files to him and that Ms. McMillan be required to render a bill (on an hourly basis) for fees and disbursements as if there were no contingency fee agreement (Kelly v. McMillan, para. 14). Mr. Prodor did not commence LPA proceedings at that point. As Goepel J. notes, the original petition was heard by Mr. Justice Ralph, who ordered Ms. McMillan to deliver Mr. Kelly's files to Mr. Prodor, subject to a part payment of disbursements and Mr. Prodor's undertaking to retain from any settlement proceeds sufficient funds to cover Ms. McMillan's account until the amount was settled by agreement or determination. Ralph J. ordered the balance of the relief sought in the petition adjourned generally.

- [32] After he had settled Mr. Kelly's actions, Mr. Prodor amended the earlier petition, seeking an order to cancel the contingency fee agreement with Ms. McMillan, a further order requiring Ms. McMillan to render a bill, and an order under the LPA for a review of Ms. McMillan's account claiming the lien. The amended petition was heard before Mr. Justice Wilson, who questioned whether he had jurisdiction to order the cancelling of the contingent fee and conduct a review under the LPA and referred those portions of the petition to the registrar to determine whether the contingency fee agreement was fair and reasonable and, if it was, whether the bill could then be reviewed (*Kelly v. McMillan*, para. 18). At an initial hearing, the registrar held that the contingency fee agreement was unreasonable under the circumstances existing at the time the agreement was entered into and she ordered the contract cancelled under s. 68(6) of the LPA.
- [33] Section 68(7)(a) of the LPA provides that if the registrar cancels an agreement under s. 68(6), a registrar "may require the lawyer to prepare a bill for review". In the registrar's decision cancelling the agreement, she enquired whether Ms. McMillan intended to rely on the account rendered for the lien as the bill to be reviewed. At the subsequent PHC, counsel for Ms. McMillan advised the registrar that "they did not intend to rely on that account as the bill to be reviewed, and it was their intention to have their fees fixed on a quantum meruit basis [and as a] result there was no bill placed before the Registrar at the second hearing." (*Kelly v. McMillan*, para. 20). Mr. Kelly did not object to the registrar's review proceeding without a bill, but both parties appealed from the registrar's determination of Ms. McMillan's fees.
- [34] It was in that specific context, where the registrar cancelled the contingency fee agreement under s. 68(6) of the LPA and then proceeded to determine the lawyer's fees on a quantum meruit basis absent a bill, that Goepel J. addressed whether the registrar had jurisdiction to conduct a review of the lawyer's fees absent a bill. He found that the registrar lost jurisdiction to review Ms. McMillan's fees on a quantum meruit basis once the fee agreement was cancelled under s. 68(6) and that the registrar should have directed Ms. McMillan to prepare and provide a bill for review, as contemplated in s. 68(7):
- [47] If the agreement is cancelled, any invoice or account rendered in accordance with its terms also falls. See: *Pierce, van Loon v. Davro Investments Ltd.* (1996), 1996 CanLII 2901 (BC CA), 19 B.C.L.R. (3d) 366 (C.A.) at p. 373. Pursuant to s. 68(7), when an agreement is cancelled, the Registrar may require the lawyer to prepare a bill for review and any subsequent review must be carried out as though there had been no agreement.
- [48] Again, this is not a new concept.
- [51] I reject the suggestion that the use of the word "may" in s. 68(7)(a) allows a subsequent review to be conducted absent a bill. Such a result is contrary to the legislative scheme which has been set up. As previously noted, absent a bill, there is nothing to review. [emphasis added]

- [52] I have concluded that the Registrar lost jurisdiction in this matter when she allowed the review to proceed absent a bill having been issued by the solicitors.
- [53] After the cancellation of the agreement the lawyers should have been directed to prepare a bill. The client then would have had the opportunity to consider whether the bill was or was not reasonable and if the parties could not agree, then the matter would have properly been set down for review. In proceeding in the manner that she did, I am satisfied that the review that was conducted by the Registrar was done without jurisdiction.

[emphasis added]

- [35] The context in which Goepel J. stated "the lawyers should have been directed to produce a bill" (the phrase on which the Client relies as authority that the registrar has jurisdiction to make such an order at a PHC for an appointment under s. 70 of the LPA) cannot be ignored: the registrar had cancelled the contingency fee agreement under s. 68(6) and, because any bills rendered under the cancelled fee agreement fell, the registrar should have directed the lawyer to prepare a bill as provided under s. 68(7) of the LPA. In *Kelly v. McMillan*, Goepel J. did not expand the registrar's jurisdiction to include ordering a lawyer to produce a bill at a PHC in s. 70 proceedings.
- [36] *NST v. Levitt* is the other case on which the Client relies as authority that the registrar has jurisdiction to order the Law Firm to produce a bill. The case does not involve a contingency fee agreement. The client, Ms. Levitt, retained NST in November 2001 to represent her in complex family proceedings, which included representing her at a 29-day trial heard between September and December 2002, and a subsequent appeal heard in September 2003. After the trial judgment was released, NST had sent Ms. Levitt a letter confirming their fees for the appeal would be reduced and would not exceed \$150,000, but advising Ms. Levitt that she would incur disbursements for the appeal (*NST v. Levitt*, paras. 13-14). As Madam Justice Gray noted, NST expected Ms. Levitt to pay for the appeal disbursements (the cost of the appeal books and transcripts) directly to the service provider preparing them, but Ms. Levitt had not paid the fees by February 2004.
- [37] Ms. Levitt filed the appointment under s. 70 of the LPA on May 31, 2004, scheduling a PHC to "review the accounts of [NST] issued to [Ms. Levitt]" and stating that "attached to this appointment are the lawyers' accounts that are the subject of this appointment". Ms. Levitt attached 27 accounts dated over the period ending March 31, 2004 relating to work on both the trial and the appeal. NST objected to the review of some of the bills Ms. Levitt had attached, on the basis that the limitation period for reviewing them had expired. NST also argued that their letter regarding the pursuit of Ms. Levitt's appeal constituted a separate retainer.
- [38] The registrar first determined that the accounts attached to the appointment were part of a single retainer and Ms. Levitt was not barred from reviewing them. As Gray J. noted "[i]n other words, the registrar concluded that the "bill" under review was for all the solicitors' services relating to the trial and the appeal" (*NST v. Levitt*, para. 18). NST then issued a bill to

Ms. Levitt in February 2005 for the cost of the appeal disbursements, which they had paid in early 2005. At that point, Ms. Levitt's counsel objected to the inclusion of the February 2005 account for review on the basis it was not included with the bills attached to the original appointment. The registrar granted NST leave to include the February 2005 bill, noting that NST had advised Ms. Levitt in February 2004 that the disbursement was unpaid, and he considered it appropriate to include it in the bills being reviewed.

- [39] On the appeal of the registrar's decision, Ms. Levitt's counsel submitted the registrar exceeded their jurisdiction by considering the February 2005 bill, arguing the registrar only has jurisdiction to review the accounts attached by Ms. Levitt to the appointment. It is in this context that Gray J. determined the following at para. 26 of her reasons:

Once the registrar has jurisdiction to review a "bill", the registrar must consider the entire bill, not just the part of the bill reflected in the statements of account that one party or the other wishes the registrar to consider. That applies whether an account was omitted through clerical error, or, as here, when the account could not have been attached because it had not yet been rendered at the time of the appointment.

- [40] The appointment filed in *NST v. Levitt* complied with R. 14-1(21) and the LPA because it attached several bills issued to Ms. Levitt by NST. The bill in question that had not been rendered by NST, but was reviewed by the registrar as part of the "entire bill", was the bill for the appeal disbursements Ms. Levitt had failed to pay. The case did not involve a situation where no bills for legal fees had been rendered as is the case here and *NST v. Levitt* is not authority that the registrar has jurisdiction to order the Law Firm to produce a bill in the circumstances of this case.
- [41] The Law Firm submits that the registrar's jurisdiction and powers are circumscribed by SCA s. 13(2), R. 14-1(21), (22) and (23) (discussed above), as well as by the definition of "registrar's hearing" in R. 1-1(1), R. 23-6(4) and (5).
- [42] Rule 1-1(1) provides that a "registrar's hearing" "means an inquiry, an assessment, an accounting, a review of a bill, an examination of an agreement or an assessment of a bill of costs." The Law Firm submits that "notably absent from the list is "compelling a solicitor to issue a bill to a client", which is what it says the Client is seeking in this case and that none of the hearings listed are "mechanisms which permit a registrar to make an order compelling a solicitor to issue a bill."
- [43] The registrar's powers at a registrar's hearing and at a PHC are set out in R. 23-6(4) and (5):

Registrar's powers at registrar's hearing

- (4) A registrar may, in respect of any registrar's hearing, whether before that registrar or any other registrar,
- (a) extend, shorten or limit the time for any step in the registrar's hearing,

- (b) exercise the powers that, under Rules 22-1 (2) and (3) and 23-5 (4), may be exercised by the court,
- (c) exercise the powers set out in Rule 18-1 (5), and
- (d) direct the parties to attend a pre-hearing conference.

Registrar's directions at pre-hearing conference

- (5) Without limiting Rule 18-1 (5), a registrar conducting a pre-hearing conference may give directions for the conduct of any registrar's hearing, whether or not that registrar's hearing is before the registrar conducting the pre-hearing conference, including, without limitation, directions respecting the following:
 - (a) the production of documents;
 - (b) oral examinations for discovery;
 - (c) service of notices to admit;
 - (d) service of experts' reports;
 - (e) service of witness lists;
 - (f) any other matter that may assist in the just and efficient determination of the issues.
- [44] The Law Firm submits that there is no jurisdiction conferred upon a registrar to order a solicitor to create and issue a bill to a client in either the Rules or the LPA. The Law Firm cites the judgment of Madam Justice L. Smith in *Aydin & Co. v. Schaber*, 2000 BCSC 925 [*Aydin & Co.*] (which Goepel J. also cited in *Kelly v. McMillan*), in which she canvassed the registrar's jurisdiction under the LPA, specifically, whether the registrar has jurisdiction to award special or increased costs against a party on a review hearing. In *Aydin & Co., L. Smith J.* noted that it is "common ground that registrars have only such jurisdiction as is conferred upon them by statute" (para. 17). After reviewing the relevant provisions of the LPA and the Rules, she concluded that registrars do not have jurisdiction to award costs under the LPA on anything other than a party-party basis, and cannot award special or increased costs (para. 33). *Aydin & Co.* is the authority regularly cited for the principle that the registrar's jurisdiction is limited: see *Kelly v. McMillan* at para. 52.
- [45] The Law Firm submits that, just as L. Smith J. found that a registrar has no jurisdiction to award special or increased costs in *Aydin & Co.*, by analogy, a registrar has no jurisdiction to compel a solicitor to produce a bill because such a power is not conferred on a registrar by statute or the Rules. I find the analogy to be apt, and I find further support in the definition of "registrar's hearings" under R. 1-1, which does not include "application" in the list defining "registrar's hearings", an exclusion, which I infer was intentional (see Sullivan cited above). I noted earlier s. 77 of the LPA, which provides that on an application, the court may order, on terms it considers appropriate, delivery of a bill to the person charged if "a bill has not been

delivered and the bill, if it had been delivered, could have been the subject of an application for a review under section 70" (s. 77(1)). A registrar cannot hear an application under s. 77 of the LPA and make the order contemplated in s. 77.

- [46] I agree with the submissions of the Law Firm. I find nothing in the relevant provisions of the LPA or the Rules, or in the cases interpreting these provisions, that affords the registrar the jurisdiction at a PHC to order the Law Firm to produce a bill or to order it to declare that it is relying on certain provisions of the Client's CFA.
- [47] I find that the Client's Appointment, which was filed without a bill attached for review because a bill has not yet been rendered, was filed prematurely.
- [48] In oral submissions and in the response submissions, Mr. Marcoux urged me to take a "client-centred" approach to this issue, asserting that the Client "now feels like her option to consider different counsel is hampered by getting dragged into the Law Firm's dispute with its former employee."
- [49] I disagree that by determining that I do not have jurisdiction to make the orders the Client seeks at the PHC in the circumstances before me, I am somehow failing to take a "client-centred" approach or hampering the Client's freedom to seek counsel of her choice.
- [50] The Client retained the Law Firm under a contingency fee agreement (the CFA). Many justices of this Court have commented on the important role contingency fee agreements play in promoting access to justice, "allowing plaintiffs to advance claims they otherwise might not be able to afford" (see, for example, *Sagert v. Cascade Law Corporation*, 2020 BCSC 484, para. 17).
- [51] In my view, the Client cannot have it both ways - she cannot take advantage of the CFA, under which she does not have to pay legal fees until the contingent event occurs (and if her claim is dismissed, she does not have to pay legal fees at all) and, at the same time, seek an order that her former law firm deliver a bill to her prior to the conclusion of her action by raising the disputed issue that she is not responsible for the termination of the solicitor-client relationship.

"Registrar Gaily"

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