IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *McQuarrie Hunter v. Parpatt,*
2011 BCSC 800

Date: 20110620
Docket: S121925
Registry: New Westminster

Between:

McQuarrie Hunter, carrying on business of providing legal services to the public under the name of McQuarrie Hunter, Barristers and Solicitors, and Michael J. Holroyd & Daniel Orsetti, Barristers & Solicitors, of the said firm

Solicitors

And

Jill Parpatt

Client

Before: District Registrar Cameron

Reasons for Decision

Counsel for McQuarrie Hunter, Michael Holroyd and Daniel Orsetti	Leah K. Donaldson
Counsel for Jill Parpatt:	Paul G. Kent-Snowsell
Place and Date of Hearing:	New Westminster, B.C. June 6, 7 and 8, 2011
Place and Date of Judgment:	New Westminster, B.C. June 20, 2011

[1] This proceeding pursuant to the ***Legal Profession Act*** (the ***Act***) has been brought by the client, Jill Parpatt, seeking an examination of the contingency fee agreement between McQuarrie Hunter (the law firm) and herself dated April 4, 2006. She also seeks a review of the two bills rendered to her on behalf of the law firm by Mr. Orsetti dated October 31, 2005 and Mr. Holroyd dated July 13, 2009.

[2] Ms. Parpatt initially contacted the law firm to obtain advice respecting the merits of a claim to vary the terms of her late mother's Will.

[3] On September 14, 2005 she met with Mr. Maier of the law firm. She advised him that her mother had died on August 18, 2005 at the age of 92 and that by her own choice she been estranged from her mother for the last thirteen years.

[4] Ms. Parpatt provided a copy of the Section 112 notice under the ***Estate Administration Act*** along with a copy of her mother's Will dated June 10, 2005 that left her a gift of $30,000. While she was the only child, the residue of her mother's estate was left in equal shares to a step brother and a neighbour.

[5] She had determined from her own inquires made shortly after her mother's death that her mother had sold her home shortly before she passed away and that the total value of her estate was approximately $325,000.

[6] During this first meeting there was a brief discussion about the prospect of the law firm acting for her on a challenge to the Will by way of a contingency fee agreement. Ms. Parpatt already had some familiarity with such an agreement having retained a lawyer in 1986 to challenge her father's Will under a contingency agreement.

[7] At this point it was agreed that the law firm would act on a limited retainer of $1000 to gather the necessary documentation to provide Ms. Parpatt with some preliminary advice about the merits of a ***Wills Variation Act*** claim.

[8] Mr. Maier referred the matter to another member of the firm, Daniel Orsetti.

[9] Mr. Orsetti was a partner in the law firm having being called to the bar for ten years and was experienced in estate litigation.

[10] Mr. Orsetti obtained further details respecting the estate from the solicitor acting for the executor and asked Ms. Parpatt to provide him with her own account of what had led to her estrangement from her mother.

[11] Once this was all in hand, Mr. Orsetti met with Ms. Parpatt on October 26, 2005. Another senior lawyer in the law firm, Paul Levy, was also in attendance.

[12] Mr. Orsetti said that he advised Ms. Parpatt that she had a fair prospect of being successful with a claim to vary her mother's Will but there was no guarantee of success. He made reference to a number of factors that created some risk that her claim might fail as follows:

- She was an adult independent child
- She had been estranged from her mother for thirteen years and had maintained that estrangement despite some limited efforts by her mother to reconcile
- She had brought an earlier ***Wills Variation Act*** claim against her father's estate of which her mother was the sole beneficiary
- There was a gift of $30,000 to her in the Will.

[13] For his part, Mr. Levy said to Ms. Parpatt that if successful she could expect to recover at least 50% of the residue of the estate.

[14] There was also some discussion about legal fees. According to Ms. Parpatt, Mr. Levy said the "the legal fees could be high" based on Mr. Orsetti's current hourly rate.

[15] Mr. Orsetti gave evidence that he offered Ms. Parpatt either an hourly rate retainer or a contingency fee arrangement. He was not sure that he quoted her his hourly rate which was then $225 but he said he explained that the legal fees payable under a contingency fee agreement with the firm would be progressive with the

percentage recovery being greater for the firm if the matter went all the way through a trial.

[16] Recognizing that she had only a modest income from a disability pension that she shared with her husband and not wishing to put her resources at risk, Ms. Parpatt expressed a clear preference for a contingency fee agreement.

[17] Matters were left that Mr. Orsetti would prepare a draft agreement (CFA) for Ms. Parpatt to review.

[18] On October 31, 2005 Mr. Orsetti sent an account to Ms. Parpatt in keeping with the initial limited retainer for the time spent to that date. The account totalled $1000 and was paid from the retainer funds.

[19] On January 23, 2006 Mr. Orsetti wrote to Ms. Parpatt as follows:

> PRIVATE AND CONFIDENTIAL January 23, 2006
>
> Jill Parpatt
> #506 — 1026 Queens Avenue
> New Westminster, B.C. V3M 6B2
>
> Dear Ms. Parpatt,
>
> **Re: Estate of Helen Treadgold Gibbons, deceased**
> **Wills Variation Claim**
>
> Enclosed herewith please find our Contingency Fee Agreement form. We would ask you to review the enclosed document and if you agree to the terms therein, kindly sign the document and return same to our office in the enclosed pre-addressed stamped envelope.
>
> We confirm that upon receipt of the signed Contingency Fee Agreement we will immediately file your action for Wills Variation. We confirm that we have advised Mabel Eastwood that we have been verbally instructed by you to do so.
>
> We confirm our discussion of Friday, January 20, 2006, and your instructions to us that you agree to the payment of $5,000 to BC Children's Hospital being made forthwith by the estate. Upon receipt of the signed Contingency Fee Agreement we will also advise Ms. Eastwood of your agreement to the immediate payment of the gift to BC Children's Hospital.
>
> We trust you will find the foregoing to be in order. We look forward to working with you on this matter.
>
> Yours truly,
>
> McQUARRIE HUNTER
>
> DANIEL S. ORSETTI

[20] The draft CFA that was enclosed with the letter read as follows:

McQUARRIE HUNTER
Barristers & Solicitors
CONTINGENCY FEE AGREEMENT

BETWEEN:

McQUARRIE HUNTER

(the "Lawyers")

AND:

JILL PARPATT

(the "Client")

1. The Client instructs and authorizes the Lawyers to act on her behalf and to take any legal proceedings considered appropriate to enforce a Wills Variation Claim against the Estate of Helen Treadgold Gibbons, deceased.

2. The Lawyers agree to devote their utmost skill, ability and effort to this case.

3. The Client will be responsible for all disbursements in relation to the legal proceedings and will pay same whether or not the claim is successful. If the Lawyers advance disbursements, the Client agrees that the Lawyers shall be entitled to interest at 8% per annum on those disbursements from the date incurred.

4. The Client agrees that the Lawyers' fee will be a percentage of the amount recovered as follows:

   a. 20% - if the matter is settled before the commencement of Examinations for Discovery;

   b. 30% - if the matter is settled after commencement of Examinations for Discovery but before 30 days prior to the initial trial date;

   c. 40% - if the matter is settled within 30 days of the initial trial date or if a judgment is recovered after trial.

In calculating the "amount recovered', monies to which the client was initially entitled in the original Will are not to be included.

5. The Client will be responsible for payment of the Goods & Services Tax ("GST') and the Provincial Sales Tax ("PST") on the Lawyer's account for fees and disbursements. The Lawyers are responsible for remitting the GST and the PST and the Client hereby authorizes the Lawyers to deduct the necessary sum in addition to the agreed fees and disbursements out of the amount recovered and to remit same to the Government.

6. This Agreement covers all work necessary to the conclusion of trial but does not cover or oblige the Lawyers to engage in any appeal or execution proceedings.

7. Any costs awarded to the Client by the Court shall be credited to the Client. The Lawyers' fee for assessing and collecting such costs shall be charged to the Client in addition to the percentage fee at the hourly rate of the lawyer performing the work. Daniel S. Orsetti's current hourly rate is $225.00 per hour. The rate may increase on an annual basis.

8. If the Client ends this Agreement, elects not to proceed with the claim, refuses to follow the Lawyers' advice, or changes lawyers, the Client agrees to pay to the Lawyers a reasonable fee based on the hourly rate of the lawyer who has performed the work to that date. The Client also agrees that this fee will be due and payable forthwith after it is rendered and without waiting until the action has been resolved. The Client further agrees that the Lawyers have the right to decide to cease acting on the Client's behalf and if they do so the Client's obligation is only for disbursements incurred plus interest.

9. The Client may, within 90 days after the date of this Agreement or after this Agreement is ended, apply to a District Registrar of the Supreme Court of B.C. to have the Agreement reviewed pursuant to the *Legal Professions Act.*

DATED this 4th day of April, 2006.

_____ _____

LAWYER JILL PARPATT
DANIEL S. ORSETTI

[21] Ms. Parpatt gave evidence that she read over the agreement .She noted that it excluded from the calculation of the "amount recovered" the gift she was left under the Will and also understood that the percentage recovery for the law firm was expressed on a scale of between 20% and 40% depending upon at what stage of the litigation any recovery was made on her behalf.

[22] She did not have any questions or uncertainty about the terms of the CFA and signed and returned it on April 4, 2006.

[23] On April 18, 2006, Mr. Orsetti filed a Writ of Summons and Statement of Claim commencing the Wills variation action on behalf of Ms. Parpatt.

[24] As matters would transpire, the litigation proceeded very smoothly and successfully viewed from Ms. Parpatt's perspective.

[25] Examinations for Discovery of all three parties were completed in one day on December 20, 2006.

[26] In February 2007 an offer was made on behalf of the two residuary beneficiaries to share the estate in equal one third shares with Ms. Parpatt. Recalling Mr. Levy's advice that she could expect to receive at least fifty percent of the estate if successful and not hearing otherwise from Mr. Orsetti, Ms. Parpatt declined this offer. She had in mind recovering no less than two thirds of the estate.

[27] After completing an exchange of documents the matter was set for trial for July 2008.

[28] After setting the trial date Mr. Orsetti recommended to Ms. Parpatt that they arrange for a judicial settlement conference. He told her that he had achieved good results in the past in other estate litigation after such a conference was held.

[29] On February 5, 2008 a judicial settlement conference was held. Mr. Orsetti prepared a written submission that asserted that there had been a failure on the part of her mother to meet her moral obligations to her only daughter. The presiding Judge advised the parties that at a trial Ms. Parpatt would most likely be entitled to at least 50% of the estate. Negotiations ensued and by the end of the day a settlement was reached that provided that Ms. Parpatt would receive 63% of the estate, the executor would not charge any executor's fees and any litigation expenses of the executor would be excluded from the estate accounting. The settlement also provided for Ms. Parpatt to approve the executor's accounts.

[30] It was common ground between Mr. Orsetti and Ms. Parpatt that they discussed the net amount she would receive based upon a percentage recovery by the law firm of 30% of the value of the settlement in keeping with the CFA before confirming the settlement. With an allowance for the gift of $30,000 under the Will the amount that was to be paid in addition was calculated to be about $180,000.

[31] Mr. Orsetti promptly confirmed the settlement with the other side by letter dated February 7, 2008 which reads as follows:

VIA FAX TO: (604) 885-5441 February 7, 2008

Eastwood & Company
Banisters & Solicitors
101 —5711 Mermaid Street
P.O. Box 1280
Sechelt, B.C. VON 3A0

ATTENTION: ROBERT H. J. BURGESS

Dear Mr. Burgess:

Re: Parpatt v. Begg et al
Your File No. 5238

We write further to our attendance at the Settlement Conference before the Honourable Madam Justice Dillon on February 5, 2008, we confirm that the parties have agreed to settle this matter as follows.

The estate will be divided 63% to the Plaintiff and 37% to the Defendants and each party will bear their own costs.

From the gross value of the estate, probate fees and other usual estate expenses will be deducted. It was expressly agreed that no litigation costs will be deducted from the gross value of the estate neither will there be an executor's fee paid.

It was also agreed that estate accounts would be prepared to be approved by our client. Our office will prepare the necessary Consent Dismissal Order and will forward it to you for signature and return to us for filing. We will do this once the accounting has been prepared.

At this time, we would ask you to provide our office with an accounting for the estate. Please include a list of all receipts and expenses of the estate. Also, please include any projected future expenses.

As is usual in the administration of estates, it may be reasonable to make an interim distribution once past expenses have been agreed upon. We would ask you for your comments on that point.

Our client has advised that she does not want any of the household and personal items from her mother's estate. The executor is free to dispose of those things as far as our client is concerned.

Given that our client was not told about the items being stored nor that the estate was incurring expense for such storage, in our view this expense is not a proper expense of the estate.

We look forward to receiving the executor's accounting.

Please advise when you believe funds will be available.

Yours truly,

McQUARRIE HUNTER

DANIEL S. ORSETTI

[32] Shortly after this letter was sent Mr. Orsetti left the law firm and Ms. Wingson assumed conduct of the matter.

[33] Unfortunately the matter of the estate accounting became difficult to resolve. This was not due to any lack of diligence on the part of the law firm or any lack of cooperation on the part of Ms. Parpatt. Simply put, the parties to the litigation could not agree on whether storage costs incurred by the estate of approximately $5,000 ought to be paid out of the estate. Ms. Parpatt saw this expense as being not necessary and not properly incurred and she was adamant that she would not pay any portion of it.

[34] In addition to that issue, Ms. Parpatt needed to be satisfied that the appropriate amount was calculated for the litigation expenses of the other side. She also raised questions respecting an insurance policy held by her late mother and asked for a copy of an appraisal of the home reflecting its value at the time of sale.

[35] Finally in July 2009 all of these issues were resolved with Ms. Parpatt prevailing on the issue of the storage costs. In the intervening seventeen months from the date of the settlement of the litigation, Ms. Parpatt had become somewhat anxious. At different points in time she provided instructions to set the matter back down for trial due to the difficulty in obtaining agreement on the accounting issues, or alternatively arrange for a formal passing of accounts. As a result many more hours were spent toiling on the mater by two lawyers in the firm.

[36] Ms. Parpatt received sound advice from Ms. Wingson and her successor on the file, Mr. Holroyd, to bide her time until a satisfactory resolution was reached in July 2009 and as matters transpired no further proceedings were necessary to enforce the settlement.

[37] Ms. Parpatt met with Mr. Holroyd on July 16, 2009 and reviewed the final account that was calculated in keeping with the CFA in the sum of $54,839.40 being 30% of the net recovery. According to Mr. Holroyd, Ms. Parpatt did not object to the account and only asked one question about a modest disbursement for a corporate

search that he answered for her. He made a note that she said the account “was fair” or words to that effect.

[38] In her evidence, Ms. Parpatt said she told Mr. Holroyd that the account was correct but denied saying anything else about it.

[39] I am of the view that I do not need to resolve exactly what was said at the meeting about the final account for the purpose of the review of the CFA or an assessment of the accounts.

[40] The examination of the Contingency Fee Agreement and the review of the accounts of the law firm are governed by the following provisions of the ***Act:***

> **Part 8 — Lawyers' Fees**
> **Definitions and interpretation**
> **64** (1) In this Part:
>
> **"agreement"** means a written contract respecting the fees, charges and disbursements to be paid to a lawyer for services provided or to be provided and includes a contingent fee agreement;
>
> **"bill"** means a lawyer's written statement of fees, charges and disbursements;
> **"charges"** includes taxes on fees and disbursements and interest on fees and disbursements;
>
> **"contingent fee agreement"** means an agreement that provides that payment to the lawyer for services provided depends, at least in part, on the happening of an event;
>
> **"court"** means the Supreme Court;
>
> **"law firm"** means a law corporation or a number of lawyers or a number of law corporations or any combination of lawyers and law corporations in a partnership or association for the practice of law;
>
> **"person charged"** includes a person who has agreed to pay for legal services, whether or not the services were provided on the person's behalf;
>
> **"registrar"** means the registrar of the court.
>
> (2) Unless otherwise ordered by the court, this Part, except sections 65, 66 (1), 68, 77, 78 and 79 (1), (2), (3), (6) and (7), does not apply to a class proceeding within the meaning of the *Class Proceedings Act*.
> (3) This Part applies to a lawyer's bill or agreement even though the lawyer has ceased to be a member of the society, if the lawyer was a member when the legal services were provided.

Agreement for legal services

65 (1) A lawyer or law firm may enter into an agreement with any other person, requiring payment for services provided or to be provided by the lawyer or law firm.

(2) Subsection (1) applies despite any law or usage to the contrary.

(3) A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.

(4) An agreement under this section may be signed on behalf of a lawyer or law firm by an authorized agent who is a practising lawyer.

Contingent fee agreement

66 (1) Section 65 applies to contingent fee agreements.

(2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:

(a) limit the amount that lawyers may charge for services provided under contingent fee agreements;

(b) regulate the form and content of contingent fee agreements;

(c) set conditions to be met by lawyers and law firms making contingent fee agreements.

(3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.

(4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6)

(5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.

(6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only

(a) before entering into a contingent fee agreement, and
(b) after serving the client with at least 5 days' written notice.

(7) The court may approve an application under subsection (6) if

(a) the lawyer and the client agree on the amount of the lawyer's proposed fee, and

(b) the court is satisfied that the proposed fee is reasonable.

(8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:

(a) the hearing must be held in private;
(b) the style of proceeding must not disclose the identity of the lawyer or the client;
(c) if the lawyer or the client requests that the court records relating to the application be kept confidential,

(i) the records must be kept confidential, and
(ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.

(9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not disclosed and any information that may identify the lawyer or the client is not disclosed.

Restrictions on contingent fee agreements

67 (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.

(2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.

(3) A contingent fee agreement for services relating to a child custody or access matter is void.

(4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.

(5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

Examination of an agreement

68 (1) This section does not apply to agreements entered into before June 1, 1988.

(2) A person who has entered into an agreement with a lawyer may apply to the registrar to have the agreement examined.
(3) An application under subsection (2) may only be made within 3 months after

(a) the agreement was made, or

(b) the termination of the solicitor client relationship.

(4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.

(5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.

(6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.

(7) If an agreement is cancelled under subsection (6), a registrar

(a) may require the lawyer to prepare a bill for review, and

(b) must review the fees, charges and disbursements for the services provided as though there were no agreement.

(8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.

(9) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the examination of an agreement.

Lawyer's bill

69 (1) A lawyer must deliver a bill to the person charged.

(2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.

(3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.

(4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.

(5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.

(6) The court may permit a lawyer to sue to collect money owed on a bill before the end of the 30 day period if the court finds that

(a) the bill has been delivered as provided in subsection (1), and

(b) there is probable cause to believe that the person charged is about to leave British Columbia other than temporarily.

Review of a lawyer's bill

70 (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person 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.

(2) 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.

(3) Subject to subsection (11), a lawyer may obtain an appointment to have a bill reviewed 30 days or more after the bill was delivered under section 69.

(4) The lawyer must serve a copy of the appointment on the person charged at least 5 days before the date set for the review.

(5) The following people may obtain an appointment on behalf of a lawyer to have a bill reviewed:

(a) the lawyer's agent;
(b) a deceased lawyer's personal representative;
(c) the lawyer's assignee;
(d) in the case of a partnership, one of the partners or a partner's agent;
(e) the custodian of the lawyer's practice appointed under section 50.

(6) If a lawyer has sued to collect on a bill, the court in which the action was commenced may order that the bill be referred to the registrar.

(7) The court may make an order under subsection (6) whether or not any party has applied for an order.

(8) On a referral under subsection (6), the registrar may

(a) review the bill and issue a certificate, or
(b) make a report and recommendation to the court.

(9) When making an order under subsection (6), the court may direct that the registrar take action under subsection (8) (a) or (b).

(10) Section 73 applies to a certificate issued under subsection (8) (a).

(11) In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:

(a) the lawyer has sued and obtained judgment for the amount of the bill;

(b) application for the review was not made within the time allowed in subsection (1).

(12) If a lawyer sues to collect money owed on a bill, the lawsuit must not proceed if an application for review is made before or after the lawsuit was commenced, until

(a) the registrar has issued a certificate, or
(b) the application for review is withdrawn.

(13) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the review of bills under this section.

(14) The registrar may refer any question arising under this Part to the court for directions or a determination.

Matters to be considered by the registrar on a review

71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).

(2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:

(a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
(b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

(3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:

(a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
(b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.

(4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

(a) the complexity, difficulty or novelty of the issues involved,
(b) the skill, specialized knowledge and responsibility required of the lawyer,
(c) the lawyer's character and standing in the profession,
(d) the amount involved,
(e) the time reasonably spent,
(f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
(g) the importance of the matter to the client whose bill is being reviewed, and

(h) the result obtained.

(5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

Costs of a review of a lawyer's bill

72 (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.

Remedies that may be ordered by the registrar

73 (1) On the application of a party to a review under this Part, the registrar may order that a party

(a) be permitted to pay money in installments on the terms the registrar considers appropriate, or
(b) not be permitted to collect money on the certificate for a period the registrar specifies.

(2) On a review under this Part, the registrar may

(a) give a certificate for the amount the registrar has allowed the lawyer for fees, charges and disbursements, and
(b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.

(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.

(4) If a registrar gives a certificate under subsection (2) that requires that the lawyer refund money to another person, the registrar must add to the amount to be refunded an amount of interest calculated

(a) on the amount the lawyer is required to refund to the other person,

(b) from the date the money to be refunded was paid to the lawyer to the date on which the certificate is given, and

(c) at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.

Refund of fee overpayment

74 A lawyer must, on demand,

(a) refund fees, charges and disbursements received or retained in excess of the amount allowed under this Part or the rules, and

(b) pay any interest added under section 73 (4).

Review of the Contingency Fee Agreement

[41] The parties are agreed that the decision of our Court of Appeal in ***Commonwealth Investors Syndicate Ltd. v Laxton*** (1990) 50 B.C.L.R.(2d) 186 (B.C.C.A.) is the governing authority respecting the review of contingency fee agreements.

[42] In that decision, the Court stated:

> In our opinion s.99 contemplates a two-step enquiry.
>
> The first step investigates the mode of obtaining the contract and whether the client understood and appreciated its contents. The enquiry would include whether, at the time the contract was entered into, there was any lack of capacity on the part of the client, whether there was any undue influence exercised or unfair advantage taken by the solicitor, whether any mistake was made, or whether any other flaw arose in the formation of the contract which would indicate that the client did not understand and appreciate its content. The onus would be upon the solicitor to satisfy the foregoing requirements of the enquiry. Should any of those be found, the contract would not be "fair" in the sense of the statute and Re Stuart. The court would declare the contract cancelled, or would modify it, or the bill could be remitted for taxation.
>
> The second enquiry, assuming the contract is found to be "fair" involves an investigation of the "reasonableness" of the contract. On this investigation, extending from the time of the making of the contract until its termination or its completion, all of the ordinary factors which are involved in the determination of the amount a lawyer may charge a client are to be considered, and each factor may be the subject of professional evidence to

> assist the judge in determining the reasonableness of the fee in the particular circumstances.

[43] The Court provided some further guidance as follows:

> To summarize: close examination should be made of the words of Re Stuart. It says very distinctly that the solicitor must not only satisfy the Court that (a) the agreement was fair with regards to the way it was obtained; but (b) must also satisfy the Court that the terms are reasonable; and (c) the matters covered by the expression "fair" cannot be re-introduced in the "reasonable" consideration. Conversely, the matters covered by the expression "reasonable" cannot be considered in the "fairness" enquiry.
>
> In our view the two enquiries are in nearly watertight compartments. One compartment investigates the mode of obtaining the contract and whether the client understood and appreciated its content. The second enquiry involves the reasonableness of the amount of the fee.

[44] In the decision of ***Long, Miller v. Sawchuk*** 2002 BCSC 542 Mr. Justice Goepel reviewed a contingency fee agreement in the setting of a ***Wills Variation Act*** claim that has some similarities to this matter. I reproduce that portion of his judgment that deals with the analysis of the contingency fee agreement:

> **[46]** In ***Commonwealth*** the Court of Appeal held that the review of the contingency contract was a two-step process. The initial step was to determine whether the agreement was fair in the matter in which it was obtained. The second step was whether the agreement was reasonable with respect to the amounts owing under it. In this case the Master found that the agreement was fairly obtained and that decision is not challenged on this appeal. The Master went on to find that the agreement was unreasonable and modified the contract by reducing the contingency to 20%.
>
> **[47]** In ***Commonwealth*** the court held that the investigation of reasonableness extended from the time of making the contract until its termination or completion. All of the ordinary factors that were involved in the determination of the amount a lawyer may charge were to be considered. The purpose of the inquiry was to determine whether the ultimate fee charged by the lawyer was reasonable.
>
> **[48]** In ***Commonwealth*** the Court of Appeal was critical of two earlier Supreme Court trial decisions (***Re MacFarlane*** (1975), 1 W.W.R. 764 (B.C.S.C) and ***Usipuik v. Jensen*** (1986), 3 B.C.L.R. (2d) 283 (S.C.)) in which trial judges had held that before a contingency contract was signed the lawyer must give the client some prediction of the work involved and the expected result. The Court stated at p. 199:
>
> To require a lawyer to investigate the case and give a reasonable prediction of the results before the contract is signed in our opinion

casts an unfair burden on the lawyer, could postpone the legal advice to the client at a time when needed, and makes perfectly clear contingency fee contracts which were completely understood by the client at the time of signing, liable to be set aside. The wrong assessment by the lawyer on incomplete information from the client might have obliged the lawyer to perhaps bear much financial risk in the interim; and because the assessment was wrong, the client could get from the lawyer services rendered on a completely different fee basis with different considerations motivating the parties.

[49] ***Commonwealth*** was decided under the terms of the ***Barristers and Solicitors Act***, R.S.B.C. 1979 c. 26. Section 99 of that legislation provided as follows:

> 99(1) Notwithstanding any law or usage to the contrary, a member of the society may contract, in writing, with a person as to the remuneration to be paid him for services rendered or to be rendered to the person in lieu of or in addition to the costs which are allowed to the member.
>
> 99(2) The person who has so contracted with a member of the society, or the representative of the person, may apply by motion or petition to the Supreme Court. If the court does not consider the contract fair and reasonable, it may either modify the contract or order the contract to be cancelled, and the costs, fees, charges and disbursements for the business done to be taxed in the same manner as if no contract had been made.

[50] Prior to the decision in ***Commonwealth*** the legislation was changed with the introduction of the predecessor to the present s. 68(5). Under the present legislation the registrar determines whether the agreement is unfair or unreasonable. The time for that determination is when the contingency contract was entered into.

[51] In ***Waldock v. Bissett*** (1992), 67 B.C.L.R.(2d) 389 (C.A.) Southin J.A. queried whether the test for interference with the bargain made between a solicitor and client may be different under the two enactments. In ***Randall,*** Levine J. (as she then was) held that the two step process outlined in ***Commonwealth*** was still applicable to a review of a contingency agreement. She indicated that both fairness and reasonableness are to be determined at the time that the agreement is entered into. She acknowledged that this may change some of the questions asked, but not the matter to be determined. Fairness still involves the mode of obtaining the contract and reasonableness still involves the amount of the fee.

[52] On a review of an agreement under s. 65(5) the registrar must confirm the agreement unless the registrar considers the agreement "unreasonable" at the time it was made. ***The New Oxford Dictionary of English*** defines "unreasonable" as "beyond the limits of acceptability or fairness". In my opinion, once it is determined that a contract has been fairly entered into, a registrar should be most reluctant, other than in an obvious case, to find a contract upon which

the parties have relied to govern their relationship, to be unreasonable. The registrar should only do so if satisfied that the contract is beyond the limits of acceptability or fairness.

[53] In determining whether an agreement is beyond the limits of acceptability a registrar should apply with great caution the criteria by which a legal fee will ultimately be assessed. Applying such criteria at the outset of the retainer to find an agreement unreasonable can very easily lead to an unjust result. It will be the rare case that the course that litigation will take will be known at the outset. It will often be most difficult to know, at the time the contingency agreement is signed, with any degree of certainty how complex an action may become, whether liability will be issue, the amount that may be recovered, the risk to the law firm or the time it will take to bring the action to conclusion. As noted in ***Commonwealth*** it would cast an unfair and unrealistic burden on a solicitor to investigate a case in detail before entering into a contingency contract.

[54] An analysis of reasonableness, based on the criteria used to determine legal fees, if applied at the outset of the case, will in many cases, be little more than a speculative exercise that runs the risk that an otherwise valid contract will be set aside without consideration of what in fact has taken place during the course of the retainer. Such a result is the antithesis of what was intended by ***Commonwealth.***

[55] There will, of course, be cases in which the agreement is unreasonable on its face, such as ***Randall,*** or cases when at the time that the contingency agreement is entered into there will be sufficient knowledge concerning the litigation and surrounding circumstances that the registrar hearing the matter will be able to safely determine whether or not the contingency agreement is beyond the limits of acceptability. Examples of such cases may include agreements in regards to appeals such as ***Spraggs & Co. Law Corporation v. Lopushinsky***, [2002] B.C.J. No. 444 (S.C.) or personal injury cases in which there is evidence of a serious injury and no liability issue such as ***Kay v. Randell***, [1997] B.C.J. No. 797 (S.C. Reg.).

[56] It is also to be remembered that when an agreement is not cancelled or modified under s. 68(6), it does not necessarily follow that the lawyer will in fact be paid pursuant to the terms of the contract. The lawyers account still remains subject to a review pursuant to s. 70 which review will determine whether the ultimate fee is in fact reasonable.

[57] In this case the Master concluded that the contingency agreement was unreasonable. In coming to that conclusion the Master commented on the various criteria mentioned in the ***Randall*** decision. In considering that criteria she concluded the contract was unreasonable in light of the situation known at the time it was executed. She noted in particular there was a likelihood of substantial reward with no risk as to recovery from the estate. She also noted that the solicitors were not required to carry disbursements. Instead of cancelling the contract she chose to modify the contingency by

> reducing it to 20%. In doing so she appears to have accepted the opinion of Mr. Roberts that 20% is the top end of the fee appropriate.
>
> **[58]** With respect I cannot agree with that conclusion. When the contract was signed little was known for certain as to the course this litigation would take. That is not at all uncommon in litigious matters. What was known was that the solicitors would have to muster evidence of the relationship between Mrs. Sawchuk and her mother --- a relationship which lasted some sixty years. What that evidence would reveal and how it would be marshalled and sifted would only become known to the solicitor as they proceeded with the action. At the outset it appeared likely that there would be a favourable outcome, but it was not possible to predict with any certainty the amount that a court might award or how long it might take to resolve the action. Although there was no risk that a judgment would not be satisfied there was no assurance of the amount that would recovered. Although the solicitors were not required to carry disbursements, they would not see any remuneration for their efforts unless and until funds were paid to their client. I do not believe that a 25% contingency fee could, at that time this contract was entered into, be considered beyond the limits of acceptability.
>
> **[59]** I am fortified in this conclusion by the Master's decision to modify the contract by reducing the contingency from 25% to 20%. If a 20% fee is considered reasonable it is difficult to classify a fee based on a 25% recovery as being beyond the limits of acceptability, particularly when you do not know the actual fee that will be generated by the percentage chosen. See: ***Sandbeck v. Glasner & Schwartz*** (1989), 39 B.C.L.R. (2d) 69 (C.A.).
>
> **[60]** I have reached the conclusion that the Master erred in modifying this contingency agreement. In my opinion this agreement was neither unfair nor unreasonable in the circumstances existing at the time the agreement was entered into and the registrar should have confirmed the contract.

[45] Mr. Kent-Snowsell urged upon me that the CFA dated April 4, 2006 should be determined to be unfair considering all of the circumstances at the time it was entered into.

[46] He asserted that the law firm should have been satisfied once they did the preliminary investigation that the case to vary the Will was very strong and that the only real issue would be “how much will the client recover?” In his submission the law firm ought to have evaluated the risks much differently and should have painted a much more positive picture of the likely outcome for Ms. Parpatt.

[47] He also submitted that the advice given by the members of the firm about the burden that would be carried by Ms. Parpatt if she chose an hourly rate retainer was coloured by the firm's own self interest and perhaps in a subtle fashion may have been designed to mislead her.

[48] With all of this, counsel submitted that the CFA drafted by the firm was not fair and ought to be set aside.

[49] Ms. Donaldson emphasized that when looking at fairness at the time the CFA was entered into it there was proper reason to conclude that the case was not free from risk.

[50] I was referred to the decision of our Court of Appeal in ***Kelly v Baker*** [1996] B.C.J. 3050 where the Court said:

> **56**. In general terms, the law recognizes the moral obligation on a testator to make provision for independent adult children. In Tataryn, McLachlin, J. expressed it this way at 156:
>
> Similarly, most people would agree that an adult dependent child is entitled to such consideration as the size of the estate and the testator's other obligations may allow. While the moral claim of independent adult children may be more tenuous, a large body of case law exists suggesting that, if the size of the estate permits and in the absence of circumstances which negate the existence of such an obligation, some provision for such children should be made*: Brauer v. Hilton* (1979), 15 B.C.L.R. 116 (C.A.); *Cowan v. Cowan Estate* (1988), 30 E.T.R. 216, affirmed (1990), 37 E.T.R. 308 (B.C.C.A.); *Nulty v. Nulty Estate* (1989), 41 B.C.L.R. (2d) 343 [[1990] 2 W.W.R. 558] (C.A.). See also *Price v. Lypchuk Estate, supra*, and *Bell v. Roy Estate* (1993), 75 B.C.L.R. (2d) 213 [[1993], 4 W.W.R. 40] (C.A.), for cases where the moral duty was seen to be negated.
>
> **57.** The latter two cases cited are examples of factual circumstances where the testator was held to be justified, for valid and rational reasons, in disinheriting the claimant.
>
> **58**. In deciding a claim under s.2(1) of the *Act*, the task of the court is to decide whether, at the date of the testator's death, her will was consistent with the discharge by a good parent of her duties to her family: *Landy v. Landy Estate* (1991), 60 B.C.L.R. (2d) 282 (C.A.), *Morris v. Morris* (1982), 41 B.C.L.R. 239 (C.A.), and *Lukie v. Helgason* (1976), 1 B.C.L.R. 1 (C.A.). The law does not require that the reason expressed by the testator in her will, or elsewhere, for disinheriting the appellant be justifiable. It is sufficient if there were valid and rational reasons at the time of her death - valid in the sense of being based on fact; rational in the sense that there is a logical connection between the reasons and the act of disinheritance.

> **59**. Here there was ample evidence to support the trial judge's conclusions. There was good reason for the testator to believe that the plaintiff had abandoned the family, and good reason for her to feel that the plaintiff had treated her and her husband in a hateful and hurtful way. Both reasons afford logical explanations for the testator's decision to disinherit the plaintiff.

[51] Ms. Donaldson noted that the thirteen year estrangement could support the modest gift that was given to Ms. Parpatt. She emphasized this was not a case of complete disinheritance.

[52] It was submitted that there was no evidence to support a finding of duress, misrepresentation or any breach of fiduciary duty in the manner in which the CFA was obtained by the law firm.

[53] I was reminded that :

- Ms. Parpatt was given ample time to review the draft CFA and seek any other legal advice she wished to before committing to it:
- She did not question the terms with the law firm;
- She had a background working as a bookkeeper and had challenged her father's Will in 1986 electing to contract for legal services at that time under a contingency fee agreement;
- Ms. Parpatt did not want to put her resources at undue risk to pursue the litigation.

[54] I have reached the conclusion that the CFA was fairly obtained.

[55] I accept the evidence given by Mr. Orsetti that he explained the legal risks and summarized his advice by saying that the claim had a good prospect of success but was by no means a guarantee. Mr. Levy buttressed that advice by saying that if successful, Ms. Parpatt should expect to receive at least 50% of the estate.

[56] I also find that Ms. Parpatt was a thoughtful and knowledgeable client who knew how much risk she was prepared to accept to pursue the litigation and that she made a freely informed decision to accept the CFA offered to her by the firm.

[57] I find there was no pressure placed upon Ms. Parpatt to accept the CFA nor was there any lack of candour on the part of the law firm in the advice they gave to her about its terms.

[58] In my opinion this agreement was neither unfair or unreasonable in the circumstances existing at the time it was entered into and I confirm it.

Section 70 Review

[59] The principles underlying this review process are well described in ***Long Miller*** as follows:

> **[62]** In this proceeding the client, by notice of appointment, sought both an examination of the agreement and a review of the accounts. The existence of the contingency fee contract does not bar a review under s. 70 once the registrar has completed the examination under s. 68 and found that the agreement is not unfair or unreasonable. See ***Coad v. Rizak*** (1999), 68 B.C.L.R. (3d) 340 (S.C.).
>
> **[64]** Pursuant to Part 8-1 of the ***Law Society Rules*** the lawyer who prepares a bill for fees earned under a contingency fee agreement must ensure that the total fee is reasonable under the circumstances existing at the time the bill is prepared. In discussing the two-step inquiry, the court in ***Commonwealth*** said at 198:
>
> > The second inquiry, assuming the contract is found to be "fair" involves an investigation of the "reasonableness" of the contract. On this investigation, extending from the time of the making of the contract until its termination or its completion, all of the ordinary factors which are involved in the determination of the amount a lawyer may charge a client are to be considered...
>
> **[65]** In a second appeal in the ***Commonwealth*** case, ***Commonwealth Investors Syndicate Ltd. v. Laxton*** (1994), 94 B.C.L.R. (2d) 177 (C.A.)("Commonwealth No. 2"), the court dealt with the meaning of "reasonableness". McEachern C.J.B.C. said at para. 25:
>
> > I take the foregoing to mean that a contingency fee agreement under the old regime had to be reasonable in the result. This brought into play the well established principles which generally govern the fixing of a lawyer's fee such as those stated in ***Yule v. Saskatoon (City)*** (1955), 1 D.L.R. (2d) 540 (Sask. C.A.), and, of course, those further considerations that apply only to contingency fees. These include at least the risk there being no recovery at all and the expectation of a larger fee based upon the results that would be appropriate in non-contingency cases.
>
> **[66]** After reviewing the arguments of counsel and the ***Yule*** criteria McEachern C.J.B.C. continued at para. 46-47:

> While the *Yule* principles furnish useful categories to consider in a matter of this kind, I am not persuaded that the "Registrar's" process asserted by Mr. Nathanson is the proper way to determine the reasonableness of a fee in a case of this kind. That process lacks relevance in the context of a case where both judgment, audacity and legal skill, which were obviously required, must be measured against an agreed formula. Furthermore, the process suggested by Mr. Nathanson requires this Court to assess the expert evidence and apply arbitrary values to a variety of factors to reach a base figure and then to add a further arbitrary amount for risk and expectation which, in turn, would produce an arbitrary fee. In this kind of a process, it would be just as reasonable to measure the *Yule* factors at $1.5 million as at $500,000, and although a Registrar would have to do that in the absence of an agreement, I do not think that would be the correct way to approach this problem.
>
> Instead of making such an assessment, I believe this Court, particularly, must remember its task. This is not to fix a fee either by a reconsideration of all the evidence and the application of judgment or arbitrarily, however one characterizes such a process, but rather to decide whether the agreement operates reasonably in the context. All the circumstances must be considered, including the *Yule* factors, the risks and expectations, and the terms of the bargain which is the subject matter of the inquiry. With all this in mind, the court must then ask, as a matter of judgment, whether the fee fixed by the agreement is reasonable and maintains the integrity of the profession? In other words, I think the amount payable under the contract is the starting point for the application of the court's judgment.
>
> **[67]** Although ***Commonwealth No. 2*** dealt with reasonableness in context of section 99(2) of the ***Barristers and Solicitors Act*** I believe it sets out the appropriate criteria which a registrar should follow in reviewing contingency fee contracts pursuant to s. 70 of the present legislation.

[60] Accordingly, the starting point for this review is whether the fee fixed by the agreement is reasonable and maintains the integrity of the profession.

[61] In this case the amount payable under the agreement was $54,839.40 being 30% of the net recovery of $182,798.01.

[62] In assessing whether the fee called for by the agreement is reasonable I must look to the provisions of Section 71(4) and (5) of the ***Legal Profession Act.*** My consideration of those factors follows:

> **71** (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
>
> (a) the complexity, difficulty or novelty of the issues involved,

The issues in this case were not novel but the marshalling of the facts and the law to make a case that there was a moral entitlement that justified more than the modest gift left to Ms. Parpatt required careful analysis and as such I consider that the matter had slightly more than average complexity and difficulty.

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

This case did call for a lawyer who had significant experience in estate litigation.

> (c) the lawyer's character and standing in the profession,

There was no issue raised.

> (d) the amount involved,

The estate was of modest size but any variation would be very important to the client given her modest means.

> (e) the time reasonably spent,

This factor received considerable attention in argument and I will address it in detail below.

> (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,

This factor is not applicable to the bill rendered under the CFA. The rate set for the preliminary advice given by the law firm was reasonable.

> (g) the importance of the matter to the client whose bill is being reviewed, and

The outcome was of real importance to the client who had an expressed hope that her mother would provide her with a fair share of her estate to assist in her retirement years.

> (h) the result obtained.

The client improved her share in the estate by over 50% and the result was within the range of what could have been expected if she had been successful at trial. I find the result to be good but not exceptional.

[63] Returning now to the factor of time reasonably spent, I was provided with a calculation by Mr. Kent-Snowsell showing that up to the time of negotiating the settlement in February 2008 that the law firm through Mr. Orsetti had only recorded thirty two hours of time. At Mr. Orsetti's hourly rate of $225 the fees to that juncture would have amounted to approximately $7000.

[64] Mr. Kent-Snowsell submitted that at that point in time any risk to the law firm evaporated and all that remained was to complete the estate accounting and disburse the settlement proceeds.

[65] I was urged to find that the very high premium in fees that the law firm would earn if the CFA were to govern as written without an adjustment would be unreasonable bearing in mind Law Society Rule 8-1 (2) which provides:

> **Reasonable remuneration**
>
> (2) A lawyer who prepares a bill for fees earned under a contingent fee agreement must ensure that the total fee payable by the client
>
> > (a) does not exceed the remuneration provided for in the agreement, and
> >
> > (b) is reasonable under the circumstances existing at the time the bill is prepared.

[66] A calculation was also provided for the legal work done by Ms. Wingson and Mr. Holroyd to bring the estate accounting to a satisfactory conclusion. Using the same hourly rate of $225 another $9600 in time was incurred. Mr. Kent-Snowsell submitted that since this work was done when there was "no risk" to the law firm that an hourly rate was the appropriate measure to compensate the firm for it.

[67] Ms. Donaldson submitted that the time factor ought not to be considered out of proportion to the other enumerated factors in Section 71(4) and that in fact Mr. Orsetti should be credited with another 30 to 50 hours bearing in mind his evidence that he did not record all of the time he spent preparing for and attending the judicial settlement conference. In his evidence he said he took a more relaxed approach to time keeping because he was retained under a CFA.

[68] Mr. Kent-Snowsell accepted that some additional time should be credited to Mr. Orsetti and submitted that 12 hours was the appropriate figure.

[69] It is unfortunate that the time recording was incomplete up to the time of settlement as this leaves me with some uncertainty in this part of the evaluation that could have been avoided.

[70] For the purpose of assessment of the account that was rendered I will add another 30 hours to the date of settlement. Applying the hourly rate of $225 this yields an amount of $14,000 or approximately one quarter of the amount charged under the CFA.

[71] Section 71(5) of the ***Act*** provides that I am not bound by the terms of the agreement in exercising my discretion.

[72] This case is unusual in that the law firm spent close to as much time and effort after reaching the settlement to conclude the matter as was spent in reaching the settlement itself. The time spent after the settlement was reached was not “at risk” time. The law firm has earned a substantial premium in the result.

OUTCOME

[73] I have concluded that to maintain the integrity of the profession and to arrive at a fee that is reasonable that some reduction of the amount payable under the CFA must be made.

[74] As will be seen, in making this adjustment I have left the law firm with a substantial premium taking into account the time and effort that was invested to reach a good outcome. To ensure integrity it is clearly not always necessary or appropriate to factor out any premium payment to a law firm resulting from a comparison between the CFA and a notional hourly rate bill but there is point when the differential requires an adjustment to maintain integrity. I consider this case to be one for such an adjustment.

[75] I am reducing the fee from $54,839.40 to the amount of $37,000. This sum is made up of two components recognizing the time and effort spent by the law firm when success was “at risk” and the time and effort spent after success was achieved and there was “no risk.”

[76] I allow $27,500 for the first component being a 100% premium on the time spent to the date of settlement and $9500 for the post settlement work that compensates the law firm fully for the hours spent by the lawyers who succeeded Mr. Orsetti at a blended hourly rate of $225 for their time.

[77] The first account rendered by the law firm is upheld in the sum of $1000.

[78] In the result there is a refund due to the client of more than one sixth of the bill and pursuant to Section 72(1) (a) of the ***Legal Profession Act*** the law firm must pay the costs of the client that I summarily assess as provided for in Section 73(2) (b) in the amount of $1800 inclusive of disbursements.

[79] The law firm must also pay interest on the amount to be refunded pursuant to section 73(4) of the ***Act*** at the rate prescribed under the ***Court Order Interest Act*** from July 13, 2009.

[80] No challenge was taken to the disbursements on either account and they are allowed.

[81] The parties may submit a certificate in the appropriate amount for my signature.

“District Registrar Cameron”