

# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 88**

Date: **2025 06 24**  
File No.: QBG-RG-00885-2020  
Judicial Centre: Regina

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BETWEEN:

ONE ARROW FIRST NATION

APPLICANT

- and -

MAURICE LAW

RESPONDENT

**Counsel:**

Sonia Eggerman and T. Joshua Morrison  
Richard Buchwald, K.C. and Joshua Liberman

for the applicant  
for the respondent

-and-

File No.: QBG-RG-00748-2021  
Judicial Centre: Regina

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BETWEEN:

BEARDY'S & OKEMASIS CREE NATION

APPLICANT

- and -

RON S. MAURICE and MAURICE LAW

RESPONDENTS

**Counsel:**

Sonia Eggerman and T. Joshua Morrison  
Richard Buchwald, K.C. and Joshua Liberman

for the applicant  
for the respondents

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JUDGMENT  
June 24, 2025

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NORBECK J.

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**I. OVERVIEW**

[1] In QBG-RG-00748-2021, Beardy’s & Okemasis Cree Nation [Beardy’s] filed an originating application against the respondents, Ron S. Maurice and Maurice Law. Beardy’s is seeking an order pursuant to ss. 64(3) of *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1 [LPA], declaring that the retainer agreements between Beardy’s and Ron S. Maurice and Maurice Law, are unfair and unreasonable [Beardy’s Application].

[2] In QBG-RG-00885-2020, One Arrow First Nation [One Arrow] filed an originating application against the respondent, Maurice Law. One Arrow is also seeking an order pursuant to ss. 64(3) of the LPA declaring that the retainer agreements between One Arrow and Maurice Law, are unfair and unreasonable [One Arrow Application].

[3] In a case management order dated February 7, 2023, the Beardy’s Application and the One Arrow Application were consolidated and directed to be heard together. In a subsequent consent order dated February 14, 2023, I confirmed I would determine the reasonable fees owed by the applicants, should it be found that any of the

retainer agreements are unfair or unreasonable.

[4] With the parties' consent, I ordered that the evidence filed in the One Arrow Application was admissible in the Beardy's Application, and *vice versa*. Further, with the parties' consent, I remained seized of the hearing in this matter, which took place over three days. The hearing consisted of a mix of affidavit review, review of cross-examination on affidavit transcript evidence, and oral and written argument by the parties.

[5] In both applicants' Briefs of Law, they requested the Court read each Brief of Law in conjunction with the other. I have done so and attempted to organize the decision in a way that reduces repetition where possible.

[6] Collectively, One Arrow and Beardy's are referred to as the [Applicants], and the One Arrow Application and the Beardy's Application will be referred to as the [Applications]. I shall also refer to the respondents, Maurice Law and Ron S. Maurice, collectively as [Maurice], but will refer to Ron S. Maurice as [Mr. Maurice] where appropriate.

[7] For the following reasons, the Beardy's Application is granted.

[8] For the following reasons, the One Arrow Application is granted, in part.

## **II. BACKGROUND**

### **A. General**

[9] The Applicants are both signatories to Treaty No. 6, in which the Government of Canada [Canada] made several promises to the signatory First Nations. The Applicants engaged Maurice to assist them in claiming compensation from Canada related to certain promises made and other wrongdoings.

[10] Canada had branded Beardy's, One Arrow, and other Saskatchewan and Alberta First Nations as Rebellion Nations, meaning they were disloyal bands because of their alleged participation in the Northwest Resistance. As a result of Canada branding the Applicants as Rebellion Nations, it unilaterally withheld treaty annuity payments and salary benefits, among other things, owed to One Arrow and Beardy's.

**B. Beardy's & Okemasis Cree Nation**

[11] Affidavit evidence in support of and in response to the Beardy's Application was filed by Chief Edwin Ananas, Elder Angus Esperance, Chief Richard Gamble, Jeremy Seesequasis, Chief Lorie Whitecalf, Mr. Maurice, and David Knoll. Beardy's filed affidavits from their solicitors and their solicitors' legal assistant, attaching emails and invoices received throughout the file.

[12] Chief Ananas was elected Chief of Beardy's on March 27, 2020, after serving as an elected Councillor in March 2017. In his affidavit filed on October 31, 2022, Chief Ananas identified the Chiefs that served before him, in the period relevant to Beardy's Application, as Chief Roy Petit, Chief Gamble (serving two terms with a break in between), Chief Ramona Gardipy, and Chief Gary Littlepine.

[13] Elder Esperance had worked with the Federation of Sovereign Indigenous Nations [FSIN] before Beardy's engaged with Maurice, then began working with Maurice in 2005. Chief Gamble was elected Chief in 2006 and held the position until 2011. He was re-elected in 2014 and served a three-year term. Mr. Seesequasis was elected as a Band Council Member for Beardy's in 2014 and continued in that role until March 2023. Chief Whitecalf was the Chief of Sweetgrass First Nation [Sweetgrass] and was first elected in 2011. Beardy's proffered Mr. Knoll as an expert and provided his expert opinion.

[14] The Beardy's Application asks the Court to consider the retainer

agreements and legal fees sought by Maurice following its pursuit of four specific claims on behalf of Beardy's against Canada, including the [Annuities Claim], [Salaries Claim], the Agricultural [Ag] Benefits Claim [Ag Benefits Claim], and the [Flood Claim].

[15] The Annuities Claim relates to Canada's withholding of treaty annuity payments owed to Beardy's from 1885 to 1888 following their alleged participation in the Northwest Resistance. The Salaries Claim arises from Canada unseating Beardy's Chief and Headman, and withholding treaty salary benefits from 1885 to 1936, again as a result of Beardy's alleged participation in the Northwest Resistance. Canada made partial treaty salary payments from 1937 to 1951. The Annuities Claim and the Salaries Claim overlap with the One Arrow Application.

[16] In 1999, the predecessor to the FSIN retained Maurice to prepare and file specific claims for the withheld annuity payments on behalf of Beardy's, Poundmaker Cree Nation [Poundmaker], Little Pine First Nation [Little Pine], and Sweetgrass. Maurice billed close to \$5,000 for his work drafting the Beardy's Annuities Claim, which was filed with the Specific Claims Branch in 2001.

[17] In the late 2000s, the Rebellion Nations agreed to apply for and pool funding from the FSIN Treaty Rights Protection Fund [TRPF] to advance Beardy's Annuities Claim as a "test case". The FSIN paid Maurice \$264,500 for Maurice's initial fees, including expert reports [FSIN Funds]. The FSIN Funds were provided to each Rebellion Nation in equal shares, and each was responsible for repaying its share of the FSIN Funds upon successful resolution.

[18] On April 28, 2005, Beardy's passed a Band Council Resolution [BCR] formally appointing Maurice as legal counsel for its Annuities Claim and confirming the claim had been submitted to the Specific Claims Branch in 2001. At that point, the Specific Claims Branch had not accepted the Annuities Claim for negotiation.

[19] On September 6, 2006, Maurice presented at the annual Treaty No. 6 gathering, raising the potential for all Rebellion Nations – to which there were 14 total – to advance their annuities claims collectively. Between May 2007 and October 2007, Elder Esperance obtained executed BCRs from each Rebellion Nation agreeing to share the costs of advancing the Beardy’s Annuities Claim as a “test case”. Each Rebellion Nation was to contribute \$15,292.86 of their allotted TRPF funds to advance the Beardy’s Annuities Claim.

[20] Mr. Maurice avers to meeting with the Chiefs of the 14 Saskatchewan Rebellion Nations on May 29, 2007, where they approved the strategy to advance the Beardy’s Annuities Claim “test case” before the Specific Claims Tribunal [Tribunal]. Maurice acknowledges that the legal costs were to be shared among all 14 Rebellion Nations to reduce duplication of costs and time. Mr. Maurice undertook to seek funding through what he described as a unique insurance policy that would relieve the Rebellion Nations from paying any fees or disbursements unless and until the Annuities Claim was successful.

[21] On October 26, 2007, Beardy’s applied for and obtained \$214,000 in additional TRPF funding for Maurice’s legal fees to advance the Annuities Claim. Maurice states that there was no obligation for the Rebellion Nations to repay the FSIN Funds if the claim was unsuccessful, but each Rebellion Nation was to reimburse their respective share if the claim was successful.

[22] In June 2008, Canada rejected the Annuities Claim for negotiation. On October 19, 2009, Maurice made a global settlement offer to Canada to settle all Annuities Claims on behalf of all the Rebellion Nations.

[23] On November 12, 2008, Maurice filed a statement of claim in Federal Court on behalf of Beardy’s seeking remedies for withholding treaty annuities, rations, relief, and salaries. Maurice did not proceed with the federal claim because they

intended to file a claim with the newly formed Tribunal.

[24] Each Rebellion Nation signed retainer agreements with Maurice but agreed to share the costs of advancing Beardy's Annuities "test case". The Rebellion Nations did not have a written cost-sharing agreement.

[25] Maurice litigated the Annuities Claim, resulting in a \$4,500,000 judgment: *Beardy's & Okemasis Band #96 and #97 v Her Majesty in Right of Canada*, 2015 SCTC 3; and *Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2016 SCTC 15.

[26] The Ag Benefits Claim arises from Canada's failure to provide agricultural benefits promised to Beardy's upon signing Treaty No. 6 and following Beardy's settling at Duck Lake, Saskatchewan.

[27] In 1904, Canada built a drainage ditch that caused flooding to Beardy's reserve. The Flood Claim relates to flooding and road construction which occurred on Beardy's reserve, as well as other breaches of Canada's fiduciary duties.

[28] The Beardy's Application involves two retainer agreements relating to the four claims against Canada. The first retainer agreement involved the Annuities Claim [Annuities Retainer]. The parties dispute whether the Salaries Claim is included in the Annuities Retainer.

[29] The second retainer agreement involved the Flood Claim and the Ag Benefits Claim [Flood/Ag Retainer]. The Flood/Ag Retainer includes a financing and insurance program recommended by Maurice.

[30] Maurice acted as legal counsel for Beardy's between 2005 and January 2021. On January 21, 2021, Beardy's Council passed a BCR terminating its retainers with Maurice. Chief Ananas' evidence is that they decided to terminate Maurice

because they had concerns about Maurice's legal fees and the liability owing under a loan and insurance policy. Beardy's retained current counsel shortly thereafter.

[31] On March 17, 2021, Maurice sent Beardy's a letter seeking payment of \$1,137,956.65 plus interest, plus a proportionate share of any contingency fee once Beardy's received compensation on the Ag Benefits Claim and the Flood Claim (Exhibit F to the affidavit of Chief Ananas, dated April 6, 2021):

- (i) Invoice #6522 (Salaries Claim) for \$679,036.93 with a discount applied, reducing the total to \$370,639.97;
- (ii) Invoice #6517 (Flood Claim) for \$493,125.20;
- (iii) Invoice #6451 (Ag Benefits Claim) for \$91,057.51. Maurice previously applied \$63,575 from trust;
- (iv) Invoice #6518 for \$11,626.66 for general advising; and
- (v) 12% contingency on the Salaries Claim.

[32] As of October 31, 2022, Chief Ananas estimated that the settlement of the Ag Benefits Claim would exceed \$175 million. The value of the Flood Claim was unknown. Beardy's negotiated a total settlement of \$4,101,046 in the Salaries Claim after terminating Maurice.

[33] By Court order, \$492,125.52 (representing a 12% contingency fee claimed by Maurice) is held in trust pending the outcome of the within proceedings.

### **C. One Arrow First Nation**

[34] The One Arrow Application involves two contingency fee retainer agreements One Arrow entered with Maurice, to pursue Canada for compensation from its unlawful acts concerning the 1885 Northwest Resistance. Maurice has characterized

the first written contingency fee agreement as the Annuities and Salaries Retainer Agreement, and the second is the [Western Boundary Retainer].

[35] One Arrow's Annuities Claim and Salaries Claim are claims against Canada based on the same premise as those in the Beardy's claim with the same name, but brought on behalf of One Arrow.

[36] The second retainer in question relates to the [Western Boundary Claim]. Following One Arrow signing Treaty No. 6 in 1876, it settled just east of what would become Batoche, Saskatchewan. In 1884, officials of Canada discovered an overlap with river lots claimed by Métis and the western boundary of One Arrow's reserve and took approximately 800 acres of land along One Arrow's western boundary to give to the Métis of St. Laurent, Manitoba. The unlawful taking of One Arrow's land is the basis of the Western Boundary Claim.

[37] After Maurice had completed work on the Western Boundary Claim for the FSIN, One Arrow retained Maurice directly and entered into a contingency fee retainer with Maurice to continue pursuit of the Western Boundary Claim. The Western Boundary Retainer was executed in April 2012.

[38] Affidavit evidence in support of and in response to the One Arrow Application was filed by Elder Esperance, Chief Gamble, Dave Smart, Chief Tricia Sutherland, Mr. Maurice, and Mr. Knoll. One Arrow tendered Mr. Knoll as an expert and provided his opinion.

[39] As noted, Elder Esperance is an elder member of Beardy's and worked with the FSIN before working with Maurice. Chief Gamble was Chief of Beardy's, serving two terms with a break in between. Chief Sutherland was the Chief of One Arrow in 2000. Mr. Smart is the Chief Financial Officer for One Arrow. At the time he swore his affidavit, he had worked in this role for 24 years.

### III. ISSUES

[40] The following issues arise:

- (i) Does the Beardy's Annuities Retainer include the Salaries Claim?
- (ii) Is the Beardy's Annuities Retainer fair and reasonable?
- (iii) Is Maurice entitled to a contingency fee for the Salaries Claim?  
What amount is owing on the Salaries Claim?
- (iv) Is the Flood/Ag Retainer fair and reasonable?
- (v) Does the One Arrow Annuities Retainer include the Salaries Claim?
- (vi) Is Maurice entitled to a contingency fee for the Salaries Claim?  
What amount is owing on the Salaries Claim?
- (vii) Is the One Arrow Western Boundary Retainer fair and reasonable?
- (viii) What are the respondents entitled to on a *quantum meruit* basis?

### IV. LEGAL FRAMEWORK

[41] I am guided in my analysis by the *LPA*. Subsections 64(3) and (4) state as follows:

#### **Contracts for remuneration**

**64(3)** A member or a person who has entered into a fee agreement with a member pursuant to subsection (1) may apply to a judge of the court for a determination as to whether or not the agreement is fair and reasonable.

(4) Where, on an application pursuant to subsection (3), a judge determines that a fee agreement is fair and reasonable, the agreement is deemed for all purposes to be fair and reasonable.

[42] The *LPA* speaks to the Court's powers in s. 65:

**Courts' powers not limited**

**65** Nothing in this Act limits the powers of the courts with respect to the revision or assessment of a bill of costs.

[43] The Applicants rely on ss. 67(1)(a) of the *LPA* in its request for an assessment of the invoices rendered by Maurice to the Applicants:

**Application for taxation**

**67(1)** A bill of fees or disbursements with respect to services performed by a member may be assessed:

(a) on application to the court: (i) by the person charged with the bill, within 30 days after the day on which the person received the bill;

(ii) by the member, if no application is made pursuant to subclause (i); or

(iii) by the person charged with the bill, after the expiration of the time set out in subclause (i), if the court is satisfied that it is in the interests of justice to do so; ...

[44] The Supreme Court of Canada has recognized the importance of contingency fee agreements to the legal system, particularly from the standpoint of access to justice. The Courts support the notion that contingency fees make court proceedings available to parties who may not otherwise have the financial resources to proceed: *Coronation Insurance Co. v Florence*, [1994] SCJ No 116 (QL) (SCC).

[45] Contingency fee agreements are at the heart of the within Applications. Neither party has suggested that contingency fee agreements in and of themselves are improper, and both have acknowledged their importance to the Canadian legal system.

[46] The *LPA* permits contingency fee arrangements:

### **Contracts for remuneration**

**64(1)** Notwithstanding any law or usage to the contrary, a member may contract in writing with a person with respect to the remuneration of the member, on a basis other than fee for service, for services rendered or to be rendered to the person.

[47] The *Law Society of Saskatchewan Rules [LSS Rules]* speak to contingency fees agreements as follows:

### **Contents of Contingent Fee Agreements**

**1902(1)** Every contingent fee agreement that a member enters into with a client shall be in writing.

(2) A member who enters into a contingent fee agreement with a client shall ensure that the agreement:

(a) is fair and the member's remuneration provided for in the agreement is reasonable, under the circumstances existing at the time the contract is entered into;

(b) states that any party to the agreement may apply to the Court pursuant to subsection 64(3) of the Act for a determination as to whether the agreement is fair and reasonable;

(c) does not purport to exclude the member's liability for negligence;

(d) does not purport to require the member's consent before a client may abandon, discontinue or settle the cause; and

(e) does not purport to prevent the client from changing lawyers before the conclusion of the retainer.

(3) Each party to a contingent fee agreement must sign it, and the member shall deliver a copy of the agreement to each such party.

...

### **Fees Payable Pursuant to Contingent Fee Agreements**

**1904** A member who prepares a bill for fees earned and

disbursements and other expenses charged pursuant to a contingent fee agreement shall ensure that the total remuneration payable to the member:

- (a) does not exceed the remuneration provided for in the agreement; and
- (b) regardless of the remuneration provided for in the agreement, is reasonable under the circumstances existing at the time that the member prepares the bill.

### **Retainer Agreements**

**1905(1)** Every retainer agreement that a member enters into with a client shall be in writing.

(2) A member who enters into a retainer agreement with a client shall ensure that the agreement:

- (a) specifies in clear and unequivocal language the term of the agreement, whether any further fees or disbursements will be charged, what specific matters are covered by the agreement; and
- (b) does not mislead clients in any way with respect to the services covered by the agreement.

(3) Funds received pursuant to a retainer agreement are considered trust funds as defined in Rule 1501 and must be treated as such, in accordance with Part 15 of these Rules.

[48] Rule 3.6-2 of the *Law Society of Saskatchewan Code of Professional Conduct [LSS Code]* speaks to contingency fee agreements:

### **Contingent Fees and Contingent Fee Agreements**

**3.6-2** Subject to Rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

### **Commentary**

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a

number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee, in all of the circumstances, is fair and reasonable.

...

[49] Contingency fee agreements must be clear, explicit, and in writing. All legal fees charged by a lawyer must be fair and reasonable. See: *Phillips Legal Professional Corporation v Vo*, 2017 SKCA 58 at para 49, [2017] 12 WWR 779 [Vo].

[50] Saskatchewan Courts have considered the issue of fairness and reasonableness of contingency fee arrangements: see *Zipchen v Bainbridge*, 2008 SKCA 87, [2008] 12 WWR 397 [Zipchen]; *Speers v Hagemeister* (1974), 52 DLR (3d) 109 (Sask CA) [Speers]; and *Maurice Law, Barristers & Solicitors v Sakimay First Nation*, 2017 SKCA 36, [2017] 10 WWR 139 [Sakimay]. The determination of whether contingency agreements are fair and reasonable is a two-part analysis (*Zipchen* at para 29; *Sakimay* at para 46). The Court must consider the circumstances in which the agreement was made and whether the client understood the nature and effect of the agreement, the rationale for the agreement, and what other fee arrangements may be available to them (*Sakimay* at paras 47 and 55). The Court must look at the whole of the circumstances and should not be too eager to find a contingency agreement unreasonable (*Speers* at paras 17, 19, 21 and 23).

[51] The onus rests with the lawyer to satisfy the Court that the agreement is fair (*Zipchen* at para 57; *Vo* at para 66).

[52] When considering whether a retainer agreement is fair, the Court is mindful that it is the date the agreement was entered into that is important and ought not to consider the fairness of a contingency agreement with the benefit of hindsight (*Zipchen* at paras 29 and 103; *Speers* at para 16). However, when considering the reasonableness of a contingency agreement, the Court will use some hindsight in reviewing the work done and the fee charged (*Zipchen* at para 29).

[53] The factors discussed in *British Columbia (Public Guardian and Trustee) v Ralston*, 2008 BCCA 372 at paras 21-22, 299 DLR (4th) 319, are of assistance:

[21] The factors to be considered on an application for approval of fees are set out in *Harrington (Guardian ad litem of) v. Royal Inland Hospital* (1995), 14 B.C.L.R. (3d) 201, 131 D.L.R. (4th) 15 (C.A.). There Mr. Justice Hinds, speaking for the majority, considered a number of factors, which included:

1. the financial circumstances of the plaintiff;
2. the risk to the law firm where it carries disbursements;
3. the complexity of the issues;
4. the experience and skill of defendant's counsel;
5. the experience and skill of plaintiff's counsel;
6. the risk assumed by plaintiff's counsel that there would be no pay for effort expended;
7. the time expended by plaintiff's counsel;
8. the importance of the case to the plaintiff; and,
9. whether the settlement is a good settlement.

[22] He said, in commenting in general on contingency fee remuneration at p. 269:

A solicitor who undertakes the prosecution of a difficult case, the prospects of which are uncertain due to various issues such as liability, causation or damages, is entitled

to be well compensated in the event the case is brought to a successful conclusion. Such remuneration must be substantial, but not exorbitant, in order to make up for those cases taken by the solicitor on a contingency fee basis which do not result in success.

[54] I shall refer to the above-noted factors as the [*Ralston/Harrington*] factors.

[55] Finally, *Zipchen* at para 90 guides the Court in respect of the factors to be considered when assessing a lawyer's fees on a *quantum meruit* basis:

[90] We see no reason to attempt a different analysis than the trial judge undertook on the *quantum meruit* aspect. On a *quantum meruit* assessment, the court is required to consider matters such as:

- (1) the time and effort expended by the solicitor;
- (2) the complexity and importance of the matter;
- (3) the amount of responsibility assumed by the solicitor;
- (4) the degree of skill and competence demonstrated by the solicitor;
- (5) the charges of other solicitors of the same standing at the bar;
- (6) the amount of money involved;
- (7) the importance of the transaction to the client;
- (8) the results obtained; and
- (9) the ability of the client to pay.

See *Re Solicitors* [[1972] 3 OR 433], *Yule v. City of Saskatoon* (No. 4) [(1955), 16 WWR (ns) 305], and *Sandstrom & Scott v. United Chem. Ltd.* [[1989] 5 WWR 690].

[56] The Law Society of Saskatchewan suggests similar considerations in s. 3.6-1 of the *LSS Code*, and the commentary that follows, explains the fiduciary

relationship between a lawyer and their client and notes that full disclosure in all financial dealings is required. Further, the *LSS Code* suggests that the lawyer should provide written information regarding the scope of representation, the fees and disbursements, interest, and the basis on which fees will be determined.

[57] Suppose a retainer agreement is unfair or unreasonable; in that case, the Court may grant the appropriate remedy, which includes enforcing the agreement in whole or in part, rectifying it, varying it, or even declaring the entirety null and void (*Zipchen* at paras 85-87). The Court must exercise its discretion to determine a fair and reasonable fee in consideration of the factors set out in Rule 3.6-1 of the *LSS Code* and Rule 11-23 of *The King's Bench Rules*. The process is imperfect and involves a degree of rough justice (*Vo* at para 62, from *Zipchen* at para 87):

[87] The preferable view is that the remedies in these matters are flexible, as they must be when governed entirely by equitable principles. Accordingly, there is no exclusive remedy, or prescribed outcome, following a finding of unfairness in the making of a contingency agreement. Knowledge, laches, acquiescence, inequality of bargaining power, and other equitable considerations may bear on the result. A fee agreement is capable of being enforced in whole or in part, varied or rectified, or declared entirely null and void, for that matter, as the equities of the situation dictate.

[58] With the above principles in mind, I will now turn to the examination of the retainer agreements.

## V. ANALYSIS & DECISION

[59] The Applicants argued that the amounts and issues in the within proceeding are complex, technical, and convoluted. I agree. I appreciate that the parties went to great lengths to organize the materials and present their arguments thoughtfully and deliberately.

[60] The Applicants urge the Court to interpret the impugned retainer

agreements to determine the proper amount owing, outside of any assessment of fairness or reasonableness. They argue that the Court should assess joint billing practices and the allocation of legal fees across clients.

[61] Maurice urges the Court to consider each Applicant's circumstances and not draw conclusions from what may have occurred with Maurice's other clients.

## **A. Objections to Admissibility of Evidence**

### ***1. Chief Richard Gamble's Affidavits***

[62] Chief Gamble swore nearly identical affidavits in the Beardy's Application (May 4, 2021) [Gamble Affidavit 2021], and the One Arrow Application (October 28, 2022) [Gamble Affidavit 2022], and swore a reply affidavit on November 29, 2022 [Gamble Reply 2022], in the Beardy's Application. Chief Gamble was cross-examined on the Gamble Affidavit 2021 and the Gamble Affidavit 2022 on November 25, 2022.

[63] Chief Gamble passed away on December 1, 2022.

[64] The Court previously ruled that the Gamble Reply 2022 was admissible, but its weight would be determined in the hearing proper.

[65] Beardy's argued that the Gamble Reply 2022 contains controversial and contradictory evidence. They say Chief Gamble speaks about a meeting that allegedly occurred seven years earlier, and they question his memory of the details of a meeting that took place so many years prior. They say it contradicts affidavits by Mr. Seesequasis and Chief Ananas, and Beardy's had no opportunity to cross-examine Chief Gamble on the Gamble Reply 2022.

[66] Beardy's argued that the Gamble Reply 2022 contradicts statements he made the week earlier in cross-examination and constitutes an improper reply. For

example, in paragraph 21 of the Gamble Reply 2022, Chief Gamble states he always understood the Salaries Claim was part of the Annuities Claim. The week prior, during cross-examination, Chief Gamble states otherwise (Transcript, cross-examination of Chief Gamble at T15 Lines 4-10; T16 Lines 7-14):

Q. ...

So this BCR [authorizing the execution of the Annuities Retainer] is a bit like the statement of claim that we looked at previously, right, where the other claims are mentioned, but the specific retainer is authorized in relation to annuities, correct?

A. Yes

...

Q. But like the statement of claim we discussed, neither -- the salaries claim wasn't going to be resolved or the stolen medals weren't going to be resolved in the annuities claim --

A. No, no.

Q. -- correct?

A. No they weren't.

[67] Maurice argued that Chief Gamble's evidence on cross-examination confirmed the Annuities Claim and the Salaries Claim were not going to be resolved concurrently. They say that he did not admit that the same retainer agreement did not cover the two claims, or that the Salaries Claim was not going to be advanced following the success of the Annuities Claim.

[68] Regardless of the characterization of Chief Gamble's evidence on cross-examination, very little weight ought to be attributed to the Gamble Reply 2022. Chief Gamble was hospitalized at the time and while his health status is unclear when he swore the affidavit, he passed away a few days later. Further, I agree that the Gamble

Reply 2022 contains statements contradictory to his earlier affidavits.

[69] Given counsel's inability to cross-examine Chief Gamble, the disputed facts, and the contradictory evidence, I place little weight on the Gamble Reply 2022.

## 2. *Chief Lorie Whitecalf*

[70] Beardy's argued that the evidence of Chief Whitecalf was irrelevant and inadmissible and asked the Court to disregard it. They say she was absent from any discussions when Beardy's executed the Annuities Retainer or the Flood/Ag Retainer. Further, her evidence is akin to what was previously struck by the Court as irrelevant.

[71] Chief Whitecalf was Chief of Sweetgrass at the time Beardy's executed the Annuities Retainer. She averred to her understanding that the Salaries Claim was not a part of the Annuities Claim, and Sweetgrass entered into a separate retainer for the Salaries Claim. However, on cross-examination, Chief Whitecalf stepped back from that suggestion and confirmed that the Salaries Claim was not a part of the Annuities Claim, but instead was one of the Rebellion loss claims, like Ag benefits and treaty medals (Transcript, 20 April 2023, T40 Line 12-T41 Line 13).

[72] Maurice argued that Beardy's position in respect of Chief Whitecalf's evidence is without merit. Maurice states that Chief Whitecalf has firsthand knowledge of several important aspects of these matters, such as the terms of insurance and financing programs, similar contingency fee agreements with Maurice, Maurice's billing structure, and the extent to which Maurice disclosed details of the contingency fees and billing structure.

[73] I agree with Beardy's in respect of Chief Whitecalf's evidence. She speaks to the facts and circumstances of Sweetgrass, but she is a stranger to these Applications. Chief Whitecalf may be able to talk of her firsthand knowledge of the discussions between Maurice and Sweetgrass, and her understanding of the terms of the

insurance and financing programs in a broad sense. However, her knowledge is limited to her dealings with Maurice on behalf of Sweetgrass and has no application to Beardy's conversations with Maurice and the Annuities Retainer.

[74] Chief Whitecalf's evidence is like evidence previously deemed inadmissible; her evidence is, therefore, also inadmissible.

### 3. *David Knoll*

[75] Both Applicants filed affidavits from Mr. Knoll and proffered him as an expert. Mr. Knoll's statement of expertise is identical in both Applications:

#### **Statement Re Expertise**

...

The area of expertise in which the expert is tendered to offer an opinion is:

1. The specific claims process as set out by federal legislation in the *Specific Claims Tribunal Act* [SC 2008, c 22], as well as the Government of Canada's Specific Claims Policy;
2. Public and government funding available to First Nations advancing specific claims against the Government of Canada under both the Specific Claims Tribunal and the Specific Claims Policy; and
3. The general steps required to advance and settle a Specific Claim against the Government of Canada, as well as an approximate cost of each step of the proceeding.

[76] Mr. Knoll is a sole practitioner lawyer from the Province of British Columbia. He has practiced Aboriginal law for over 30 years, with a focus on preparing and negotiating specific and special claims. Mr. Knoll's *curriculum vitae* highlights his education, work history, and focus on Aboriginal law. He has lectured on First Nations issues at colleges, universities, and Law Society functions, and has acted as general

counsel on significant claims negotiations, litigation, and settlements. Mr. Knoll's experience in the broad area of Aboriginal law is extensive.

[77] Mr. Knoll certified that he knows the duty of expert witnesses under *The King's Bench Rules* 5-37(1) and (2) and prepared his report in compliance with *The King's Bench Rules*. He confirmed that he was previously qualified as an expert in a treaty entitlement matter, and he has since been qualified as an expert in Saskatchewan in *Duboff Edwards Schachter Law Corporation v Buffalo River Dene Nation and Birch Narrows Dene Nation*, 2024 SKKB 193.

[78] Maurice argues that Mr. Knoll's opinion should be given little weight. Maurice does not take issue with Mr. Knoll stating what he thinks a claim should cost and what he would charge, but Mr. Knoll's approach is not the only approach to Aboriginal claim files. Maurice argued that each claim relates to its specific circumstances and has its complexities. Because Mr. Knoll would handle a claim file differently, it does not make Maurice's retainers unreasonable.

[79] The Applicants argued that Aboriginal claims are a specialty area of the law, one in which Mr. Knoll is well-experienced. They say he is uniquely positioned to talk about claims process and federal funding available, as well as the typical costs associated with each step of the proceedings. They argue he is the only witness who does not have a vested interest in the outcome of the litigation.

[80] On review of Mr. Knoll's qualifications, he possesses the necessary expertise and experience to give opinion evidence in the within matter. Further, I accept that Mr. Knoll's evidence may be of assistance to the Court.

[81] I allow Mr. Knoll's opinion evidence.

## **B. Standing Buffalo Retainer Agreement**

[82] Maurice objected to the admission of the Standing Buffalo First Nation Retainer [Standing Buffalo Retainer] in this matter. Maurice argued that the document was irrelevant to the issues before the Court.

[83] Maurice argued that the Standing Buffalo Retainer is a separate agreement unrelated to any matters concerning One Arrow or Beardy's. Maurice's decision to adjust or change clauses in any retainer agreement is discretionary, and neither One Arrow nor Beardy's were privy to Maurice's negotiations with Standing Buffalo.

[84] The Applicants argued that the Standing Buffalo Retainer is relevant to the matters in issue and whether the retainer agreements with Maurice are fair and reasonable.

[85] The Applicants argued the retainer agreements herein are unreasonable, partially due to the penalty clause they say punishes clients who choose to terminate Maurice. They further say the retainer agreements are examples of the standard-form retainer agreements Maurice used. The agreements have slight variations, but all operate on a blended hourly fee and contingency basis.

[86] The Applicants say that, over time, the termination provisions of Maurice's retainer agreements changed, and specific clauses were removed. For example, the automatic entitlement to 50% of the contingency fee on signing the retainer agreement is removed, and legal fees are not adjusted if Maurice is terminated. They say this is an implicit acknowledgement that the termination provisions were unreasonable and unfair.

[87] Maurice argued that it is at liberty to amend its retainer agreements from time to time, and nothing can be taken from amendments made to their standard form

retainers.

[88] I agree with Maurice. The Standing Buffalo Retainer agreement was executed between Maurice and Standing Buffalo without any involvement from One Arrow or Beardy's. The Standing Buffalo Retainer is not being questioned or challenged in these proceedings, and it is irrelevant to the impugned retainer agreements herein. I do not take the amendments to unrelated retainer agreements as an implicit acknowledgement that any prior ones are unfair or unreasonable.

[89] The Standing Buffalo Retainer is inadmissible.

### **C. Termination Provisions Included in the Retainer Agreements**

[90] The Applicants take issue with the termination provisions included in the impugned retainer agreements. Given that this argument applies to both Applications and across all of the retainer agreements, I will address it from the outset.

[91] The Applicants suggest the termination provisions are akin to "poison pills" because they are designed to punish and discourage otherwise lawful behaviour. In the corporate sense, the "poison pill" would discourage a shareholder from acquiring a controlling interest in a company. The penalty or "poison pill" provisions in the retainer agreements are designed to punish and discourage the client from terminating Maurice or suffer severe financial consequences.

[92] The October 23, 2007 Annuities Retainer (One Arrow) includes the following termination provisions (Exhibit C to the affidavit of Chief Sutherland, April 29, 2020):

17. The Law Firm may withdraw as solicitor for the Client providing that reasonable notice is provided to the Client. In such event the Law Firm shall have the full right and authority to withdraw as counsel but shall not be entitled to any contingency fee. For such purposes, the Law Firm shall notify

the Client in writing and for a reasonable time thereafter shall take all reasonable and necessary steps to protect the interests of the Client until the Client has had a reasonable opportunity to obtain new representation should it so desire.

18. Subject to the following conditions, the Client shall have the right, at any time, with or without reason, to terminate and end the retainer and the employment of the Law Firm and to obtain a new solicitor or to take such steps as it deems proper. If the Client terminated the Law Firm prior to concluding a negotiated settlement of the Claim or obtaining an award of damages, the Law Firm shall be entitled to the following:

(a) a payment for legal fees to be adjusted based on the Law Firm's regular hourly rates multiplied by the total number of hours on that matter from the time of commencement to the date of termination (the "Adjusted Legal Fees") to be paid by the Client to the Law Firm upon termination; and

(b) the Law Firm shall have earned the full amount of the contingency fee set out in clause 9 if a reasonable settlement offer has been made by either party or a favourable decision has been made by a court or tribunal on liability and/or damages following a trial or hearing of the matter prior to termination of the Law Firm;

(c) if clause (b) above does not apply, the Law Firm shall be entitled to 50% of the contingency fee set out in clause 9 plus a portion of the balance of any contingency fee in proportion to the value of time worked on the file by the Law Firm and any subsequent lawyer(s) on behalf of the Client on this matter;

(d) in the case of (b) or (c) above, any contingency fees earned by the Law Firm shall be payable by the Client only upon the payment of compensation or deposit of such monies in trust for the Client.

[93] The May 27, 2008 Annuities Retainer (Beardy's) (also executed on June 29, 2011), includes the following termination provisions (Exhibit N to the affidavit of Chief Ananas, April 6, 2021):

16. The Client shall have the right, at any time, with or without reason, to terminate and end the retainer and the employment of the Law Firm and to obtain a new solicitor or to take such steps as it deems proper. If the Law Firm is terminated prior to concluding a negotiated settlement of the claim, it shall be entitled to a payment for legal fees to be adjusted based on the Law Firm's regular hourly regular rates [*sic*] multiplied by the total number of hours worked on that particular matter from the time of commencement to the date of termination (the "Adjusted Legal Fees"). The Client shall also be responsible for the payment of the bonus set out in clause 9 if the terms of a settlement are agreed to by the parties within a period of 12 months following the termination of the Law Firm.

17. It is understood by and between the parties that the Law Firm may withdraw as solicitor for the Client providing that reasonable notice is provided to the Client. In such event the Law Firm shall have the full right and authority to withdraw as counsel but shall not be entitled to the Adjusted Legal Fees. For such purposes the Law Firm shall notify the Client in writing and for a reasonable time thereafter shall take all reasonable and necessary steps to protect the interests of the Client until the Client has had a reasonable opportunity to obtain new representation should it so desire.

18. In the event that either the Client or the Law Firm terminates this retainer, the Law Firm is entitled to assert a solicitor's lien and retain the Client's documents and files until all outstanding fees and disbursements have been paid in full or appropriate trust conditions have been entered into with the new counsel for the payment to the Law Firm for Adjusted Legal Fees and bonus owing upon concluding a final settlement or judgment in the matter.

[94] The February 13, 2014 Flood/Ag Retainer contains the same termination provisions as the One Arrow Annuities Retainer. The April 5, 2014, Western Boundary Retainer also includes the same termination provision as the One Arrow Annuities Retainer. While not identical, the termination provisions in the Beardy's Annuities Retainer and the other retainer agreements are similar.

[95] Maurice has defended the inclusion of the penalty provisions in the retainer agreements by arguing that a deal is a deal. Maurice says that the clauses are

not penalty clauses; they are the costs associated with terminating Maurice in consideration of Maurice carrying the risks associated with the file. They do not prevent the Applicants from changing lawyers. Instead, the termination provisions expressly contemplate changing lawyers before the conclusion of the retainer. The provisions describe Maurice's compensation on termination.

[96] In his affidavit sworn November 30, 2022 at para. 77, Mr. Maurice speaks to the purpose of the termination provisions of the Western Boundary Retainer:

77. Given the immense costs and risks we carry on behalf of our clients, we have inserted clauses in our contingency fee retainer agreements that provide some protection for our fees in the event that a client abruptly terminates Maurice Law prior to the successful conclusion of their Specific Claim. In these circumstances, Maurice Law is entitled to recover (1) its "Adjusted Legal Costs" which is the portion of fees we discounted on interim accounts (effectively increasing the fees to regular hourly rates without any discount); and (2) a portion of the contingency fee depending on what stage the matter is at and having regard to the time worked on the file by Maurice Law and the successor lawyers. Maurice Law seeks payment of these fees as a result of its experience working with First Nations – Maurice Law has been terminated as legal counsel on the eve of payments from Canada in connection with a Specific Claim I had already settled so the First Nation was able to avoid paying the Maurice Law contingency fee. Maurice Law's retainer agreement is designed to discourage such breach of contract.

[97] One Arrow argued that the termination provisions were not specifically brought to their attention. Mr. Maurice could not recall if he had raised the clauses with One Arrow or explained the provisions to them (Transcript, cross-examination of Mr. Maurice, T264 Line 25-T268 Line 1). One Arrow argues that these clauses are unenforceable at common law and further, improper due to the nature of the solicitor-client relationship.

[98] In *Legal Profession Act, 1990 and Merchant Law Group (Re)*, 2001 SKQB 311 at paras 13, 15, and 18, 209 Sask R 252 [*Merchant*], the Court dealt with a

situation where a lawyer's contingency fee agreement was terminated, and they sought to have their hourly fees paid immediately:

[13] I find the reasoning of Chief Justice Nemetz to be extremely compelling. I agree with his conclusion that requiring a client who has retained a solicitor under a contingency fee agreement to pay that solicitor their reasonable fees before being able to transfer the file has the effect of restricting the client's right to transfer the file. This is contrary to Rule 1501(2) of the *Rules of The Law Society of Saskatchewan* which states:

1501.(2) A member who enters into a contingent fee agreement shall ensure that the agreement:

...

(e) does not purport to prevent the client from changing solicitors before the conclusion of the retainer.

...

[18] Unlike the other agreements, the [A.C.] agreement provides for the fees of Merchant Law Group to be paid in full before the file is transferred to another solicitor. In *Law Firm v. Solicitor*, [1992] A.J. 1242 (QL) (Alta. Q.B.), Mr. Justice O'Leary of the Alberta Court of Queen's Bench held that a lien in respect of fees in a contingency agreement is inappropriate. He therefore concluded that when a client requests to transfer a file undertaken pursuant to a contingency agreement, the original solicitor is not entitled to assert a solicitor's lien with respect to fees payable under the agreement. I agree with this conclusion. I therefore find that the provision in the [A.C.] Agreement requiring Merchant Law Group's statement of account to be paid before the file is transferred to be unfair, unreasonable and unenforceable, except to the extent that the statement of account relates to disbursements.

[99] The termination provisions are designed to do what Rule 1902(2)(e) of the *LSS Rules* prohibits, what *Merchant* addressed, and further, make it financially prohibitive to terminate Maurice. I endorse *Merchant* and apply the same reasoning here.

[100] The penalty provisions included in Maurice's retainer agreements are not fair or reasonable. They include serious financial consequences to the client for choosing alternate counsel and effectively remove any consideration given by Maurice in exchange for the contingency fees. While on the surface the penalty provisions do not strictly prevent the Applicants from changing lawyers, the practical reality is that the financial consequences of terminating Maurice may very well prevent the client from doing so.

[101] My finding that the penalty provisions of the impugned retainer agreements are unfair and unreasonable is not determinative of the whole of the Applications. The Court may grant the appropriate remedy when a retainer agreement, or part thereof, is found to be unfair or unreasonable (*Zipchen* at paras 85-87).

[102] The penalty provisions of the subject retainer agreements herein are unenforceable.

#### **D. Beardy's & Okemasis Cree Nation**

[103] Beardy's argued that the contingency agreements on their own and in conjunction with the litigation financing program are unfair and unreasonable. They say the hourly fees sought are unfair and unreasonable, and the amounts paid by Beardy's are unfair and unreasonable, even without a contingency fee.

[104] Maurice states that the first contingency agreement with Beardy's was for a claim to the Tribunal seeking compensation in the Annuities Claim and the Salaries Claim. While Maurice refers to this as the Annuities and Salaries Retainer Agreement, the inclusion of the Salaries Claim in the retainer agreement is disputed. For ease of reference, I will refer to this retainer agreement as the Annuities Retainer.

*1. Application of the Annuities Retainer to the Salaries Claim*

[105] Beardy's argues that the Annuities Retainer does not apply to or authorize a contingency fee on the Salaries Claim for three reasons. The first is because the Annuities Retainer does not apply to or reference the Salaries Claim in any way, nor is there an explicit agreement that the Annuities Retainer would apply to the Salaries Claim. Second, even if the Salaries Claim is included in the Annuities Retainer, the condition precedent to a contingency fee under the Annuities Retainer never occurred. Third, the time limitation to claim the contingency fee expired before a settlement agreement was reached on the Salaries Claim.

[106] Maurice states that the Salaries Claim is encapsulated within the Annuities Retainer. They argue the Salaries Claim flowed from the Annuities Claim as a separate head of damages, and both parties understood that both Claims would be pursued on the terms of the Annuities Retainer.

[107] The relevant portions of the Annuities Retainer read as follows (Exhibit N to the affidavit of Chief Ananas, April 6, 2021):

3. The Client does hereby retain and employ the Law Firm to act on behalf of the Beardy's & Okemasis First Nation in relation to the unlawful termination of treaty annuities and failure to provide other treaty benefits owed to the First Nation by the Crown (hereafter referred to as the "Treaty Benefits Claims"). The Law Firm hereby accepts such retainer and engagement in relation to all necessary steps associated with the drafting and filing of a Statement of Claim and litigation or negotiation of the Treaty Benefits Claim and any other matter that the Law Firm is retained by the Client to act on its behalf.

...

20. In the event that the Law Firm performs additional work for the Client on matters other than those set out above, the parties may agree that all professional services provided by the Law Firm to or on behalf of the Client now or in the future will be governed by the terms of this Agreement unless otherwise

agreed to in writing.

[Emphasis added]

[108] The corresponding BCRs related to the Annuities Retainer are the May 2008 BCR and the June 2011 BCR. The Annuities Retainer was presented in 2008 but not executed until 2011. The relevant portions of the May 2008 BCR (Exhibit L to the affidavit of Chief Ananas, sworn April 6, 2021) read:

**THEREFORE, BE IT RESOLVED THAT**

the Beardy's and Okemasis First Nation authorizes Maurice Law Barristers & Solicitors to file an action on its own or jointly with other Treaty 6 signatory First Nations to seek compensation regarding the termination of treaty annuities and failure to provide other treaty benefits;

**BE IT FURTHER RESOLVED THAT**

The Chief and Council authorize Chief Rick Gamble to execute the attached retainer agreement on behalf of the Beardy's and Okemasis First Nation appointing Ron S. Maurice Law Barristers & Solicitors as legal counsel in relation to all the necessary steps associated with the drafting and filing of a Statement of Claim and litigation or negotiation of the treaty annuities claim of the Beardy's and Okemasis First Nation;

[109] The relevant portions of the June 2011 BCR (Exhibit M to the affidavit of Chief Ananas, April 6, 2021) read:

**WHEREAS:** the Beardy's & Okemasis First Nation appointed Ron S. Maurice of Maurice Law Barristers & Solicitors as legal counsel to take all necessary steps associated with the drafting and filing of a Statement of Claim regarding the treaty annuities claim of the Beardy's & Okemasis First Nation, including the litigation of this claim before the Specific Claims Tribunal if necessary;

...

**BE IT FURTHER RESOLVED THAT** the Chief & Council authorize Chief Ramona Gardipy to execute the attached retainer agreement on behalf of the Beardy's & Okemasis First Nation

appointing Ron S. Maurice of Maurice Law Barristers & Solicitors as legal counsel in relation to all necessary steps associated with the filing of the treaty annuities claim with the Specific Claims tribunal and litigation or negotiation of the claim on behalf of Beardy's & Okemasis First Nation; ...

[Emphasis added]

[110] The Annuities Retainer was executed the same day as the June 2011 BCR authorizing the same.

[111] Maurice described the Annuities Retainer as seeking compensation for all heads of damage, relating to the Northwest Resistance, to proceed in two distinct phases. The first phase was to advance the Beardy's "test case" (Annuities Claim). The second phase would occur if Beardy's were successful in the "test case", at which point Maurice would seek compensation for the Salaries Claim. Maurice states that, collectively, phases one and two were different heads of damages in the same cause of action, all covered by the Annuities Retainer.

[112] Beardy's argued that the evidence does not support Maurice's position that the Salaries Claim was a part of the Annuities Claim as a second phase, or at all. Beardy's argued that the many documents throughout the record show the limited extent to which the Salaries Claim was referenced before 2017, and when it was, it was one of the many grievances Beardy's had against Canada. It was not until the success of the Annuities Claim that the Salaries Claim came into focus. Before that, there was no mention of the Salaries Claim being the second phase of the Annuities Claim.

[113] In the Gamble Affidavit 2022 and in connection with the One Arrow Application, Chief Gamble avers to various claims for Rebellion losses against Canada and the potential for joint advancement of Rebellion claims. At para. 10 of the Gamble Affidavit 2022, Chief Gamble states:

10. ... Although our primary focus was on withheld annuities, it was always understood by Chief and Council and

the other First Nations involved in this process that compensation for withheld salaries was also being sought as it was directly related to the withholding of treaty annuities as they were both losses which were imposed as a form of punishment for the First Nations' alleged participation in the 1885 Rebellion.  
...

[114] While it is unclear how Chief Gamble could speak for Chief and Council and the other First Nations involved, he says that all were aware and understood that compensation for withheld salaries was being sought. In my view, the documents attached to the Gamble Affidavit 2022 do not support this proposition.

[115] Firstly, Chief Gamble refers to an August 22, 2006 briefing note he and Elder Esperance received from Maurice (Exhibit A to the Gamble Affidavit 2021) [August 2006 Briefing Note]. He speaks to the note explaining the potential for joint advancement of “claims” related to the 1885 Resistance. Later in the same paragraph, he refers to the “claim” and the “test case,” which was a reference to the Annuities Claim. On review of the August 2006 Briefing Note, there is no reference to the Salaries Claim other than a passing reference in the background information. The litigation budget attached to the August 2006 Briefing Note sets the budget for the Annuities Claim alone. It is unclear from this document how Chief Gamble could understand that the Salaries Claim was phase two of the proposed litigation. I see no reference to a phase one or a phase two.

[116] Attached to the August 2006 Briefing Note was a draft statement of claim, which is worded more broadly and speaks to the unlawful withholding of treaty annuity benefits and “other treaty benefits”. It is unclear how one would understand from this document that the Salaries Claim was connected to the Annuities Claim, a phase two of litigation, or contemplated in the Annuities Retainer.

[117] The following document, Exhibit B to the Gamble Affidavit 2022 and the Gamble Affidavit 2021, is the Chief's application for funding from the FSIN TRPF.

The application only references a claim for withheld treaty annuities. There is no reference to phases of litigation or the Salaries Claim. It is unclear from this document how one can understand that the Salaries Claim was connected to the Annuities Claim, the Annuities retainer, or was phase two of the litigation.

[118] Exhibit C to the Gamble Affidavit 2021 is the May 2008 BCR authorizing Maurice to file an action for Beardy's on its own or jointly, seeking compensation for "the termination of treaty annuities and failure to provide other treaty benefits." It goes on to say that Maurice may take the necessary steps to advance a claim or negotiate the "Treaty Annuities Claim of the Beardy's and Okemasis First Nation." While I acknowledge this document refers to other unspecified treaty benefits, there is no reference to the Salaries Claim, phases of litigation, or the like. It is unclear from this document how Chief and Council understood that the Salaries Claim was connected to the Annuities Claim or the Annuities Retainer.

[119] Exhibit F to the Gamble Affidavit 2022 is a settlement proposal prepared by Maurice and submitted to Canada, dated October 13, 2009. The proposal speaks about the "Beardy's & Okemasis Treaty Annuities Claim," the "claim", and speaks to potential settlement of "treaty annuities" that were illegally terminated by Canada and repatriation of medals and flags. The settlement proposal does not reference the Salaries Claim or phases of litigation. From this document, the Annuities Claim appears to be a stand-alone claim, and it is unclear from this document that Chief and Council and other First Nations understood that the Salaries Claim was connected to the Annuities Claim or the Annuities Retainer.

[120] Exhibit H to the Gamble Affidavit 2022 is a trust document, between Beardy's and Royal Trust Corporation [Royal Trust], dated February 6, 2017. The first recital notes that Beardy's filed a specific claim against Canada related to the "unlawful termination of treaty annuity payments." It is the only claim referenced throughout. The

term “claim” is defined on page 4 as:

(q) **“Claim”** means all facts, matters, issues, causes of action, and specific claims asserted against Canada in relation to Canada’s unilateral and unlawful termination of treaty annuity payments to the Beardy’s & Okemasis First Nation in the aftermath of the 1885 Northwest Rebellion;

[Emphasis in original]

[121] It is not clear from the trust document whether the Salaries Claim was connected to the Annuities Claim, was a second phase of litigation following the Annuities Claim, or whether the Salaries Claim was included in the Annuities Retainer.

[122] Chief Ananas swore four affidavits concerning the Applications and was cross-examined on the affidavits on April 19, 2023. In his April 6, 2021, affidavit, Chief Ananas describes three ongoing specific claims against Canada, including the Flood Claim, the Salaries Claim, and the Ag Benefits Claim. He references a previous claim, the Annuities Claim.

[123] In his October 28, 2022, affidavit, Chief Ananas averred to his recollection of Maurice advising him that the Salaries Claim was the second phase of the Annuities Claim, and he trusted that information. Maurice argued that this is unequivocal evidence that Chief and Council knew and understood the Annuities Claim and Salaries Claim were linked to each other. However, Chief Ananas avers to learning in early 2020 Maurice was going to charge the 12% contingency fee on the Salaries Claim based on the terms of the Annuities Retainer.

[124] Beardy’s argued that it trusted Maurice was accurate when it presented that Salaries Claim was the second phase of the Annuities Claim and did not understand that a contingency fee would apply to the Salaries Claim.

[125] Beardy’s argued that Maurice’s argument that the Annuities Retainer applies to other matters ignores the phrase, “the parties may agree,” from the Annuities

Retainer. They say the terms of the Annuities Retainer apply to other matters if the parties agree, and there is no evidence of any agreement that the Annuities Retainer would apply to the Salaries Claim. Further, they say that no explanation was ever given as to how the Annuities Retainer would operate, or that it would operate in the manner suggested by Maurice.

[126] In a December 20, 2017 briefing note from Maurice to the Specific Claims Branch, Maurice noted that the Salaries Claim should be successful given their success in the Annuities Claim. Maurice argues that this memo shows a direct link between claims, and Maurice states that Beardy's reviewed the briefing note. I read the briefing note as referencing a claim (Salaries Claim) that may be successful given the outcome of the Annuities Claim. I fail to see how it connects the two claims, let alone connects the Salaries Claim to the Annuities Retainer. Furthermore, the briefing note in question was prepared by Maurice for the Specific Claims Branch. It is unclear if Beardy's reviewed and understood the briefing note.

[127] On September 30, 2019, Maurice invoiced Beardy's for work completed on both the Annuities Claim and the Salaries Claim. Both claims are noted in the "re" line, and Beardy's made no objection when it received the invoice. Maurice argued that this means Beardy's was aware that the two claims were connected.

[128] Maurice argued that it presented the Salaries Claim to Canada as an addition or to piggyback on the Annuities Claim. In doing so, Maurice was able to avoid what was often a three-year waiting period for submissions of specific claims. While that strategy may have been to Beardy's advantage, it certainly did not prevent Maurice from discussing and agreeing to a separate fee arrangement for the Annuities Claim. Further, this argument does not address what Beardy's knew or understood at the time it signed the Annuities Retainer.

[129] The May 2008 BCR and the June 2011 BCR also support the argument

that Beardy's was unaware that the Salaries Claim would be encapsulated in the Annuities Retainer.

[130] Starting in 2017, the Salaries Claim was pursued, but no additional retainer fee arrangement was entered. Beardy's argues, and I accept, that had it been aware of its options at the time, Beardy's may have elected to pursue the Salaries Claim on a straight hourly fee arrangement.

[131] Maurice argued that the plain language of the Annuities Retainer includes a scope of work which was more than just the Annuities Claim. I disagree. The Annuities Retainer contemplates the potential that it could cover other treaty rights claims; however, nothing more than the Annuities Claim was agreed to by Beardy's.

[132] On consideration of the evidence and under the circumstances, the Salaries Claim was not a part of the Annuities Claim when Beardy's signed the Annuities Retainer in 2011, or at all. Later, following success in the Annuities Claim, the Salaries Claim was pursued. The evidence supports Beardy's position that it was never given an explicit choice in the billing model for the Salaries Claim and that it certainly did not understand that Maurice intended to charge a 12% contingency fee.

[133] I do not find any ambiguity in the Annuities Retainer. The Annuities Retainer applies to the Annuities Claim and other claims or matters as agreed to by the parties. Here, the evidence does not support a claim that the parties agreed that Maurice would be compensated under the Annuities Retainer for pursuing the Salaries Claim.

[134] The Annuities Retainer, therefore, does not include the Salaries Claim.

## ***2. Pre-Condition to Claim Contingency***

[135] My decision that the Salaries Claim is not included in the Annuities Retainer is dispositive of this issue. However, if I am incorrect in my determination on

the scope of the Annuities Retainer, I agree with Beardy's that the requirements for a contingency fee in the Salaries Claim were not triggered.

[136] The Salaries Claim was resolved through negotiations without the need to claim from the Tribunal. Beardy's argued that, if the Annuities Retainer applies to the Salaries Claim, Maurice is not entitled to a contingency fee.

[137] Maurice argued that the settlement negotiations on the Salaries Claim naturally flowed as a separate head of damages from the Annuities Claim and were included in the same retainer agreement. As a result, the Salaries Claim was subject to the same compensation provisions as the Annuities Claim.

[138] Maurice relies on para. 9 of the Annuities Retainer:

9. In addition to the hourly fees payable in accordance with the rates above, the Client agrees to pay the Law Firm a bonus based on a percentage of any compensation paid by Canada or any other Defendants to the Client as a final settlement, agreement or judgement in consideration of the expertise provided by the Law Firm and a reduction of its regular hourly rates. The bonus shall be calculated in accordance with the following schedule:

(a) 6% of any settlement or judgment obtained after the filing of an action or proceeding before the courts or the Specific Claims Tribunal; or

(b) 12% of any settlement or judgment obtained after commencement of a hearing or trial before the courts or the Specific Claims Tribunal.

[139] Maurice states that para. 9 expressly allows a 12% contingency fee where Canada pays any compensation to Beardy's in consideration of Maurice's expertise.

[140] I disagree with Maurice. The clear language of the Annuities Retainer confirms the contingency is only payable after an action or proceeding is filed with the Tribunal (6%) or after the commencement of a hearing or trial (12%). Neither event

occurred in the Salaries Claim, and the contingency fee schedule does not apply.

### 3. *Time Limitation*

[141] Again, my decision in respect of the Annuities Retainer is dispositive of this issue. However, if I am incorrect in my determination on the scope of the Annuities Retainer, I agree with Beardy's that Maurice is time-barred by the Annuities Retainer to collect a contingency in the Salaries Claim.

[142] The termination clause in the Annuities Retainer sets out that the client is responsible for payment of the bonus if the parties agree to a settlement within 12 months following the firm's termination. On cross-examination, Maurice agreed that a settlement must occur within 12 months of the date of Maurice's termination, otherwise there is no entitlement (Transcript of cross-examination, T128 Line 20-T129 Line 13).

[143] Maurice was terminated on January 22, 2021. On February 9, 2022, Beardy's passed a BCR authoring the settlement with Canada on the Salaries Claim. The settlement agreement was not executed by Beardy's until March 29, 2022, and by Canada on June 14, 2022. A settlement was reached and agreed to by Beardy's and Canada after the 12 months set out in the Annuities Retainer.

[144] Maurice argued that it is entitled to payment of the contingency fee because most of the necessary historical and legal research was completed by Maurice. Maurice claimed that it essentially did all the work, and its office performed the necessary tasks to obtain a settlement. Maurice says that the parties settled for the same number Maurice sought from Canada in 2020.

[145] The plain reading of the Annuities Retainer requires the settlement or judgment to occur within 12 months of Maurice's termination. This had not occurred. I acknowledge Maurice had worked on Beardy's behalf towards a resolution on the Salaries Claim. However, the Annuities Retainer does not allow for a contingency to

be paid following termination, unless a settlement or judgment occurs within 12 months of the date of termination. The 12-month period is Maurice's protection to be paid a contingency in the event a matter settles, or a judgment is obtained, within the defined period. Maurice described that period as 12 months from termination.

**4. *Is the Annuities Retainer Fair and Reasonable?***

[146] Beardy's Chief and Council executed the May 2008 BCR authorizing Chief Gamble, and later the June 2011 BCR authorizing Chief Gardipy, to execute a retainer agreement with Maurice to commence proceedings against Canada. Chief Gamble averred to Chief and Council's understanding that Maurice would bill at reduced hourly rates plus a contingency fee up to a maximum of 12% on a negotiated settlement or any compensation award. However, the retainer agreement contemplated by the May 2008 BCR and likely addressed by Chief Gamble's affidavit is dated May 27, 2008. A second Annuities Retainer was executed on June 29, 2011, under the June 2011 BCR. In any event, the retainer agreements contemplated by the BCRs are identical, aside from the dates and signatures.

[147] The Annuities Retainer indicates that Maurice will charge hourly fees at 50% of their regular rates, plus a 2% disbursement for office expenses. Further, it includes a 6% contingency fee on any settlement or judgment after an action is filed or proceeding before the Court or Tribunal. The contingency fee increases to 12% if a settlement or judgment is obtained after a hearing or trial commences.

[148] In a memo to all Rebellion Nations dated November 17, 2011 (Exhibit 10 to the affidavit of Mr. Maurice, May 4, 2021), Maurice advised that they were confident they could obtain funding to continue with the Annuities Claims on behalf of the 14 Rebellion Nations:

### **SECTION 3: PROPOSED STRATEGY MOVING FORWARD**

The remainder of this memorandum will discuss Maurice Law's proposed strategy moving forward. As has been mentioned above, with the completion of several years of detailed legal and historical analysis, we are prepared to file a comprehensive 160 page submission with the SCB on behalf of the Annuities Bands. As such, this section will briefly address the significant benefits of pursuing the annuities claims collectively and set out our recommendations regarding the next steps in the process.

...

#### ***a) The Benefits of Pursuing the Annuities Claims Collectively***

The collective pursuit of the annuities claims offers several significant advantages which would not be available to those Annuities Bands who choose to pursue their claims individually. These advantages primarily relate to the enhanced efficiency of the collective approach and the greater likelihood of attaining a satisfactory settlement for all of the Annuities Bands, whether through negotiation or through the Tribunal process.

##### ***i) Enhances Efficiency of a Collective Approach***

The first advantage of the collective pursuit of the claims relates to the fact that our legal team has already completed the requisite work in preparing a detailed and comprehensive claim submission. The resulting 160 page specific claims submission is the product of hundreds of hours of detailed historical and legal research, analysis and drafting. As such, the opportunity to apportion the costs of this work among the Annuities Bands provides a considerable economic advantage and eliminates the need for any duplication of effort and cost.

Should the claims be pursued individually, the additional time and resources required to craft the requisite legal submissions that have already been completed would likely result in significantly higher legal fees for the individual claimant, and would also require a considerable amount of valuable time to conduct the requisite research, analysis and drafting. The enhanced efficiency and benefits of the collective approach will also continue to accrue as the claimant First Nations will be able to share equally the costs of the negotiation and/ or adjudication of the Collective Annuities Claims moving forward.

...

iii) Potential Access to Funding and Reduced Legal Fees

...

It is important to note that none of the First Nations have been required to pay any fees or disbursements to Maurice Law for the work we have performed to date as we have been able to secure funding from the Treaty Rights Protection Fund for the work done to this stage. Going forward, we are confident we can secure additional funding to proceed with these claims on behalf of all 14 First Nations so that you will not be required to pay any fees from your own funds. If we cannot obtain funding, Maurice Law is prepared to proceed on a contingency basis so that we will only be paid if we are successful in achieving a settlement or award on behalf of the First Nations.

[149] In addition to FSIN funding, Maurice suggested that Beardy's consider a loan and insurance program to finance the litigation. On March 14, 2014, Beardy's executed a loan with First Nations Bank [FNB] [FNB Loan], an insurance policy with AmTrust, and a trust agreement [Legacy Trust] with Royal Trust. The FNB Loan consisted of a line of credit for \$1,440,000 to pay Maurice's accruing hourly fees, bank fees, interest on the line of credit, and insurance premiums. The AmTrust insurance policy insured the FNB Loan in the event the Annuities Claim was unsuccessful. Any proceeds from the Annuities Claim would be paid into the Legacy Trust, and the Legacy Trust would ensure that AmTrust, FNB, and Maurice were paid from the settlement proceeds (Exhibits 17, 18, and 19 to the affidavit of Mr. Maurice, May 4, 2021).

[150] The first drawdown on the FNB Loan was on March 20, 2014, for \$800,435.34. Of that, \$460,319.37 was allocated towards discounted legal fees, disbursements, and interest. Maurice states that this was for three invoices dating back to April 1, 2010, and it was the first significant payment Maurice had received in nearly 10 years, totalling 2,005.7 hours of billed time.

[151] Maurice states that between 2011 and 2015, it continued to advance the

Annuities Claim mostly at its own expense. During that time, Maurice conducted hearings with Elders and dealt with six motions, including a motion to strike.

[152] Beardy's says Maurice received \$265,000 from Beardy's using FSIN Funds. Maurice received \$184,000 in 2009; \$40,000 on February 5, 2013; \$22,500 on June 25, 2013; and \$18,750.00 on December 12, 2013.

[153] On May 6, 2015, and after 13 days of hearings and 3 days of oral arguments on liability, judgment was rendered against Canada.

[154] A further three-day hearing took place in April 2016 on the compensation piece. Canada was ordered to pay Beardy's \$4,500,000, plus interest from April 1, 2016.

[155] Canada agreed to pay Beardy's a total of \$4,580,522.35, plus costs of \$2,319,665 on the Annuities Claim.

[156] After receiving a favourable decision in the Annuities Claim and exhausting the FNB Loan, Beardy's received funding from Canada (\$55,000) in July 2015. Between December 2015 and June 2017, Beardy's received contributions from other Rebellion Nations, which were paid to Maurice:

<b>First Nation</b>	<b>Contribution Amount</b>	<b>Date</b>
Red Pheasant First Nation	\$82,082	28 December 2015
Mosquito-Grizzly Bear's Head-Lean Man First Nation	\$216,766	22 June 2016
Lucky Man First Nation	\$59,409	5 July 2016
Little Pine First Nation	\$198,838	19 August 2016
Onion Lake First Nation	\$252,442	14 September 2016
Sweetgrass First Nation	\$238,617	21 March 2017

[157] Maurice received \$852,972.64 for hourly legal fees and disbursements from the FNB Loan. As of March 10, 2017, the balance of the FNB Loan was \$1,391,251.97, representing \$852,972.64 paid to Maurice for hourly legal fees, bank fees, interest, and insurance premiums.

[158] On March 10, 2017, the Legacy Trust received the judgment funds from Canada on the Annuities Claim and the FNB Loan was paid. Then, \$433,750.66 was paid to AmTrust as a supplement premium, and on March 14, 2017, Beardy's passed a BCR to pay Maurice \$549,622.68 for the 12% contingency fee.

[159] Maurice received payment from Beardy's for three additional invoices [Additional Invoices] for hourly legal fees totalling \$636,110.40. The Additional Invoices covered fees for the compensation hearing, leading up to the decision on compensation in December 2016, and the initial preparation of the bill of costs. The Additional Invoices included legal fees for work completed on the Salaries Claim and legal fees that Beardy's argues are group legal fees for the general benefit of all the Rebellion Nations.

[160] Maurice initially disputed, but later acknowledged, that the Additional Invoices were for work completed for the collective benefit of the Rebellion Nations and represent group fees (Transcript, cross-examination of Mr. Maurice, T57 Lines 22-23; T61 Line 15-T62 Line 6; and T65 Line 20-T66 Line 4)

[161] Maurice states that it worked a total of 6,434.55 hours on the Annuities Claim from January 2006 to March 2017, which calculates to \$2,483,075 in undiscounted fees plus disbursements of \$296,915.85.

[162] Maurice states that Canada agreed to pay costs of \$2,319,665, which was close to full indemnity of the actual expenses incurred by Beardy's, inclusive of discounted legal fees, disbursements, premiums for the litigation insurance policy,

interest on the line of credit, and the 12% contingency fee. In total, \$6,900,187.35 was deposited into the Beardy's Legacy Trust from Canada. Beardy's then paid \$1,391,251.97 to FNB and \$433,750.66 to AmTrust for the loan and insurance premiums.

[163] On March 12, 2019, Beardy's received the costs award from Canada on the Annuities Claim. Beardy's argued that Maurice then miscalculated the costs and reported that Beardy's had been fully indemnified when it had not.

[164] Maurice states that Beardy's paid FNB, AmTrust, and Maurice \$2,374,665.31, which was paid for by Canada, except for \$55,000.31. Considering Canada's additional contribution of \$55,000, they say Beardy's paid 31 cents out of pocket to advance the Annuities Claim. Beardy's says this is incorrect and Maurice failed to account for the amounts repaid to the FSIN Funds in November 2017 and the Additional Invoices.

[165] Relying on Maurice's recommendation and believing they had been fully indemnified, Beardy's authorized full repayment of the Rebellion Nations' contributions on March 18, 2019. At that time, a \$172,834 contribution from Poundmaker that had never been received was erroneously included by Maurice and paid out of Beardy's costs award. Maurice acknowledged the error and agreed that Beardy's is entitled to reimbursement; however, the funds were never reimbursed.

[166] Maurice testified that he could not apportion costs on the Salaries Claim and the Annuities Claim because he was terminated before the Claims were concluded.

[167] Further, Maurice charged Beardy's the 12% contingency fee. Beardy's argues this contingency fee is unjustified and that Beardy's paid a disproportionate amount of the group fees after having paid the Additional Invoices and the \$132,730 partial repayment of the FSIN Funds.

[168] Maurice argued that the Annuities Retainer was fair and reasonable. Much discussion had taken place about the Annuities Claims in general and the Beardy's "test case" specifically. Maurice argued it was required to continue with its work following the execution of the Annuities Retainer, researching matters relating to the claim. They say the submission documents were extensive and meticulously crafted. Between 2017 and 2020, Maurice reviewed and analysed paylists, created spreadsheets, and worked to resolve damages. Maurice argued that it contributed hundreds of hours and took considerable risk in carrying the file that long.

[169] Beardy's focused its argument on the application of the Annuities Retainer in the Annuities Claim as opposed to attacking the fairness and reasonableness of the Annuities Retainer generally.

[170] Acknowledging that the termination provisions are otherwise unenforceable, the Annuities Retainer is fair. Beardy's passed two BCRs authorizing the Annuities Retainer and executed it twice. While it is unclear why this happened, Beardy's had ample opportunity to consider the terms of the retainer and ask questions. On review of the May 2008 BCR and the June 2011 BCR, and in consideration of the evidence, Beardy's understood the nature and effect of the agreement, and the Annuities Retainer is fair.

[171] However, the question of whether the Annuities Retainer is reasonable is more difficult. In consideration of the work done, there is no question that Maurice provided high-quality work on Beardy's behalf. However, the application of the Annuities Retainer was problematic due to errors by Maurice. For one, Maurice had erroneously concluded it had recovered all the costs and did not apportion the costs appropriately. Additionally, we have the erroneous disbursement to Poundmaker.

[172] Given the trust accounting mistakes requiring rectification, the work done, and the fees charged, the Annuities Retainer is unreasonable.

## 5. *Salaries Claim*

[173] Following their success in the Annuities Claim, Maurice states that they proceeded with the Salaries Claim on instruction from Beardy's. However, Beardy's states that Maurice did so without allowing them to consider whether they wanted to proceed and whether it would be on a contingency basis or a fee-for-service basis.

[174] The legal fees for the Salaries Claim were billed to the same file as the Annuities Claim, File 106.02, which is unfortunate given the Annuities Claim was a "test case" in which other Rebellion Nations contributed to legal costs.

[175] Approximately 12 months after Beardy's terminated Maurice, they passed a BCR authorizing a settlement with Canada in the Salaries Claim [Salaries Claim Settlement]. The Salaries Claim Settlement, signed in March 2022, was for \$4,101,046, which included \$200,000 towards legal and negotiation costs. Maurice seeks an additional contingency fee of \$468,125.52 under the Annuities Retainer.

[176] Maurice argued that Beardy's settlement of the Salaries Claim was based on Maurice's assessment and settlement proposal to Canada, and that Beardy's settlement was for the same amount proposed by Maurice. Beardy says this is untrue and instead states that they settled the Salaries Claim based on a pay list completed by Canada and their current counsel, which resulted in a settlement that was \$500,000 greater than the settlement proposed by Maurice.

[177] Regardless, I have determined that the terms of the Annuities Retainer do not apply to the Salaries Claim, and even if they did, the contingency would not be payable. Maurice is not entitled to a contingency fee in the Salaries Claim.

[178] Given the above, the question remains whether additional compensation is payable to Maurice for its work on the Salaries Claim. I will address Maurice's compensation for the Salaries Claim in the *quantum meruit* section.

**6. Is the Flood/Ag Benefits Retainer Fair and Reasonable?**

[179] Beardy's asks the Court to void the Flood/Ag Retainer and determine the appropriate fees on a *quantum meruit* basis.

[180] Beardy's first sought to secure funding for the Flood Claim from the FSIN in 2007. Before this, Beardy's had asked Maurice to conduct prospective research. By September 26, 2007, a historical report was completed, and Maurice was retained to draft the legal submission to Canada for consideration. Between 2007 and 2008, Maurice received payments from Beardy's to prepare the FSIN funding request and the initial stages of the Flood Claim submission.

[181] In 2009, the FSIN retained Maurice to prepare the Flood Claim submissions for a flat fee of \$15,000. In 2010, Maurice sought a second historical report from its staff historian, for which the FSIN also paid. The FSIN extended Maurice's contract in May 2010, and Maurice continued to work on the Flood Claim.

[182] In April 2011, Maurice provided a briefing note to Beardy's advising that the second historical report was complete, and they could submit the Flood Claim in the summer of 2011.

[183] Somewhat concurrent with the Flood Claim, Beardy's was pursuing the Ag Benefits Claim and initially submitted it in 2006 through the FSIN. Beardy's retained Maurice directly in 2011 while waiting for a response to its claim submission. Canada rejected the Ag Benefits Claim, and Beardy's instructed Maurice to file a declaration of claim with the Tribunal. Beardy's states it had a proof of concept for the Ag Benefits Claim before its submission because the Treaty No. 8 Agricultural Benefits Claims had already been advanced, and they had an agreement in principle for a settlement.

[184] Maurice entered some time on the Ag Benefits Claim throughout 2011,

2012, and 2013, for work unrelated to preparing the declaration of claim. Maurice had been working on a fee-for-service basis with no contingency agreement. Beardy's says Maurice put little work into the claim until the Flood/Ag Retainer was executed. Maurice contends that it conducted significant historical research and engaged external consultants and experts to advance the Ag Benefits Claim between 2011 and 2018.

[185] Between 2011 and 2013, Maurice worked on the Flood Claim submissions. On February 8, 2013, Maurice invoiced Beardy's for \$47,963.75 to summarize the historical report and prepare the Flood Claim submission. Maurice prepared a 100-page legal brief.

[186] Over the next two years, Maurice continued to accrue legal fees to review and revise the Flood Claim submissions. Almost 1,650 hours of Maurice's legal fees were primarily attributed to two lawyers. Beardy's argues this is the equivalent of an entire billable year for a lawyer at a larger private firm, and it is incomprehensible that it would take a lawyer an entire year, billing all day, every day, to complete that submission.

[187] Beardy's accumulated hundreds of thousands of dollars in outstanding legal fees on the Flood Claim. Maurice then presented Beardy's with a litigation financing program that would handle all the liability and allow Beardy's to continue to pursue its Flood Claim, coinciding with Beardy's signing the Flood/Ag Retainer.

[188] Maurice met with Beardy's Chief and Council on May 14, 2015, where Mr. Maurice provided advice regarding financing and insurance for the Flood Claim. William J. Warren, a lawyer practising in Saskatchewan, also attended the meeting. Mr. Warren was retained to provide independent legal advice on documents relating to insurance and financing. The same day, Beardy's passed a BCR to execute the loan agreement with the Royal Bank of Canada [RBC] [Flood Claim Loan] and the insurance policy with AmTrust.

[189] Beardy's executed the Flood/Ag Retainer on February 13, 2014. According to that retainer, Maurice was to advance the Ag Benefits Claim and the Flood Claim on Beardy's behalf. A 50% discount was applied to all hourly rates, and a contingency fee was payable based on a percentage of any compensation paid by Canada to Beardy's. The contingency fees were as follows: 4% of any settlement obtained through negotiations; 6% of a settlement or judgment after the filing of an action or proceeding; or 10% of any settlement or judgment obtained after the commencement of a hearing. All compensation payable to Beardy's was to be paid to Beardy's Legacy Trust.

[190] On July 2, 2014, after Beardy's had executed the Flood/Ag Retainer, Maurice sent Beardy's a briefing note about the retainer and litigation financing program. It included a high-level overview of the litigation financing program, the security required, and an explanation as to why Maurice's blended fee arrangement was fair and reasonable. Beardy's argued that Maurice failed to advise them that other lawyers bill on a straight hourly basis.

[191] On February 14, 2018, a former associate at Maurice met with Beardy's Chief and Council about the litigation financing program on the Ag Benefits Claim. Beardy's passed a BCR and executed a loan agreement with RBC and an insurance policy with AmTrust [Ag Benefits Loan] on the same day. Mr. Warren, the lawyer who previously met with Beardy's to give independent legal advice on the Flood Loan, was unable to attend. The meeting with Mr. Warren for independent legal advice was rescheduled to March 14, 2018, one month after Beardy's executed the Ag Benefits Loan.

[192] After the Flood Claim was submitted, there was a three-year waiting period during which relatively minimal legal fees accrued. Canada never responded to the Flood Claim, and Maurice set to work on the next stage, preparing the declaration

of claim. Maurice billed over 86 hours to draft an eight-page claim. The declaration of claim was filed on July 31, 2019, and shortly thereafter, Canada agreed to negotiate the Flood Claim.

[193] Maurice states that, by that point, it had already begun working with several specialized experts to determine the extent of Beardy's damages.

[194] The terms of the Flood Claim Loan allowed two Maurice employees to authorize the drawdowns without approval from Beardy's. On July 13, 2015, Maurice took an initial draw of \$1,042,977.98 on the Flood Loan. This included payment of \$547,094.52 to Maurice for legal fees and disbursements, the remainder being charges related to the Flood Loan and insurance premiums.

[195] Maurice states that July 13, 2015, draws from the Flood Loan, including outstanding accounts and unbilled fees and disbursements dating back to 2007. It is unclear why the invoice included unbilled fees and disbursements back to 2007 when Maurice had previously invoiced Beardy's \$47,963.75 in February 2013 for the Flood Claim submission. One would think the 2013 invoice would capture unbilled fees and disbursements before that date.

[196] The July 13, 2015 draw also included a \$7,500 fee for independent legal advice from Mr. Warren; a \$25,000 charge for an insurance broker, notwithstanding that it was an existing program set up through Maurice Law; and \$25,000 for research, coordination, and liaison. It also included a previous balance of \$92,296.09, which included the \$47,963.75 from the February 2013 invoice and a disbursement of \$44,332.34.

[197] Beardy's states that the financing program and insurance were presented to them in the context of the outstanding legal fees, and that the loan was required to recover the costs incurred to that point. Maurice further states that it considers the

individual circumstances of each client and matter before recommending litigation financing and insurance. Maurice says that the litigation financing program does not lure in clients but is there to assist clients who otherwise do not have the resources to fund several years of litigation.

[198] At the time the Flood/Ag Retainer was executed, Beardy's anticipated having access to three funding sources: the loan and insurance program with a budget of \$1,500,000; federal funding from Canada; and the FSIN TRPF. Beardy's states that it is unclear why a contingency fee was required, given the numerous sources of funding and the absence of other billing options.

[199] On the Flood Claim, Maurice charged and received \$864,278.39 to file a legal submission, prepare and file the declaration of claim, and engage in preliminary discussions with experts. If one removed the adjusted legal fees on the Flood Claim, there are \$26,422.28 in new legal fees and a prior balance of \$23,642.28. Adding the two together amounts to \$50,064.56 in outstanding fees. Beardy's says this is more than offset by the amounts owing in other matters. Further, the 50% discount in the Flood/Ag Retainer was not applied. Had it been applied, \$25,032.28 would be left outstanding.

[200] Beardy's argued that the disbursement of \$44,332.34 included in the July 13, 2015 draw was an error, that it represented previous amounts paid on matters to be deposited into trust. They say the erroneous and duplicated amount resulted in Maurice being paid \$88,664.68 out of the Flood Loan. Only \$44,332.34 was paid into Beardy's trust account; therefore, Beardy's was overcharged by \$44,332.34.

[201] Between November 2020 and December 2020, Maurice and Beardy's engaged in settlement negotiations with Canada. Beardy's terminated Maurice on January 22, 2021, before negotiations with Canada were completed.

[202] Maurice's termination by Beardy's triggered the insurance policy's

default provisions. Beardy's attempted to have AmTrust authorize the appointment of new legal counsel, to no avail, as the policy was an exclusive arrangement with Maurice. Maurice confirmed that AmTrust would not agree to alternative counsel, and any time Maurice is terminated, it is a default that triggers the penalty provisions.

[203] The default led to a claim by RBC. AmTrust paid out the Flood Claim Loan but subrogated the liability plus a termination premium against Beardy's. At the point of Maurice's termination, the Flood Claim Loan balance was \$1,684,473.54, plus the supplemental premium of \$409,973.06 and termination premium of \$109,973.06, for a total liability of \$2,504,419.66.

[204] Additionally, Maurice issued an invoice on March 16, 2021, for \$493,125.20, comprising \$26,422.28 in new legal fees charged at full hourly rates and \$466,702.92 in adjusted legal fees, payable immediately. The adjusted legal fees represent the retroactive removal of the discount on all the previous Flood Claim invoices and \$52,518.40 paid under the prior Court order.

[205] The disbursements from the March 16, 2021 invoice include expert fees for Dr. David Chanasyk, whom Maurice retained. Despite being paid, Dr. Chanasyk refused to cooperate with Beardy's after Maurice was terminated, citing unspecified ethical concerns. Maurice admitted he spoke to Dr. Chanasyk following his termination, and Dr. Chanasyk's refusal to cooperate with Beardy's may have resulted from their conversation. Similarly, he refused to cooperate with Beardy's on the Ag Benefits Claim, rendering the costs incurred for the expert a total loss.

[206] The total cost to Beardy's to submit the Flood Claim to the Specific Claims Branch, draft an eight-page declaration of claim, retain experts, and engage in preliminary settlement discussions was \$3,041,877.20. Maurice also seeks an additional 2% contingency on the Flood Claim.

[207] Beardy's argued that the Flood/Ag Retainer, in conjunction with the associated loan and insurance products, was unfair and unreasonable. Maurice was initially retained on a fee-for-service arrangement on both the Ag Benefits Claim and the Flood Claim. Beardy's says that Maurice was unwilling to move the Ag Benefits Claim forward until Beardy's executed a contingency fee agreement along with the loan and insurance policy.

[208] Mr. Seeseequasis averred that the loan and insurance program being presented to Beardy's was something that was required before they could advance the Flood Claim. Beardy's was aware that it had outstanding legal fees owed to Maurice and believed the only way they could pursue the Flood Claim was to agree to the combination of hourly fees and contingency fees.

[209] Chief Gamble also averred that Beardy's had no other options to pay Maurice's legal fees. He had been told that there was no funding available from Canada to research and submit the Flood Claim. Chief Gamble believed that Beardy's could not advance the Flood Claim without the loan and insurance program, and he was comfortable with the contingency fee arrangement.

[210] However, Beardy's states that when the Flood/Ag Retainer was executed, there were sources of funding available to pay the legal fees without the liability of a contingency fee on either claim: the loan, federal funding, and FSIN funding. Beardy's argued that these funding sources would have been more than sufficient to pay Maurice's legal fees on a fee-for-service arrangement without the contingency, had the Ag Benefits Claim been billed reasonably.

[211] Beardy's says that Maurice's billing practices coloured their view of the cost of legal proceedings. Beardy's argued that Maurice generated exorbitant legal fees to create a problem that was only solved through the loan, insurance program, and contingency fee.

[212] Beardy's argued that the litigation financing program created five issues: i) it reduces or eliminates the risk and ensures that Maurice is compensated throughout the life of a claim; ii) it permits Maurice to engage in overbilling with minimal client oversight; iii) it generates massive bank and insurance fees; iv) creates "poison pills" that dovetail with Maurice's retainer agreements that make it financially ruinous to terminate Maurice; and v) Maurice charges exorbitant contingency fees when the claims settle. The contingency fees are stacked with fees charged to other Rebellion Nations with similar claims, resulting in hundreds of millions of dollars in aggregate compensation.

[213] Maurice acknowledged that at the time the Flood/Ag Retainer was entered into, the hundreds of thousands of dollars of legal fees were likely a part of the discussion. Maurice also confirmed that they did not discuss alternative billing arrangements or options with Beardy's.

[214] Beardy's states that it did not receive independent legal advice when the Flood/Ag Retainer was executed, nor was there any explanation provided as to how it would operate. Months after the Flood/Ag Retainer was executed, Maurice provided Beardy's with a briefing note, but it did not explain the possibility of proceeding without a contingency fee arrangement.

[215] Beardy's received independent legal advice when it executed the Flood Claim Loan and after it executed the Ag Benefits Loan. The legal advice from Mr. Warren to Beardy's addressed only the loan and insurance program, not the Flood/Ag Retainer.

[216] Furthermore, Mr. Warren explains what the retainer says, and that alternative counsel may be appointed by AmTrust's consent upon the termination of Maurice, and such consent is not to be unreasonably withheld. The retainer does not say AmTrust will never consent to alternative counsel.

[217] Mr. Seeseequasis was present for the execution of both the Flood Claim Loan and the Ag Benefits Loan. He states that the meetings were perfunctory with pre-tabbed pages for signatures. Mr. Seeseequasis was never informed that federal funding or other funding options were available.

[218] Beardy's argued the Flood/Ag Retainer was unreasonable for reasons aside from or in addition to the way it was entered. On its own and combined with the loans and insurance policies, it amounts to paying for risk management and financing services twice: once as insurance premiums and bank fees, and then again as a contingency fee upon the conclusion of the matter.

[219] The loan and insurance programs are offered and arranged by Maurice for its clients. The loan and insurance program then facilitates ongoing payment of Maurice's hourly fees under the Flood/Ag Retainer by making quarterly borrowing requests that trigger payments from the loan to Maurice for legal fees and to AmTrust for insurance premiums. The borrowing requests prepared by Maurice are sent directly to the lender.

[220] Maurice confirmed it had a pre-existing relationship with AmTrust and acknowledged the insurance and loan programs are advertised on its website as a way to assist First Nations in financing claims against Canada. The loan then pays the hourly legal fees as the matter progresses, and Beardy's is required to pay the legal fees at the end, upon successful resolution.

[221] The general benefit to the client in a contingency fee agreement is noted. The lawyer provides legal services and finances the legal fees, thereby managing risk in the event of an unsuccessful resolution. In exchange, the client pays an elevated cost for legal services provided and for financing and risk management services.

[222] Beardy's argued that the elevated costs for risk management and

financing through Maurice's Flood/Ag Retainer, plus loan and insurance programs, were duplicative and unreasonable. A contingency fee is typically higher than hourly fees to reflect the risk taken by the law firm. Beardy's argued that the risk here was wholly mitigated by the loan and insurance policy. It allowed for the immediate collection of legal fees and disbursements even where the claim does not settle. Maurice carries no real risk but still collects the contingency fee at the end.

[223] Maurice argued that the litigation financing program is available for the client to advance their claim with no immediate cost to them. As a result of the loans, Beardy's did not spend any out-of-pocket dollars on the Flood Claim and Ag Benefits Claim. Furthermore, they argue that the contingency fee bears no resemblance to a risk management payment, but rather is intertwined with the other compensation terms, including the 50% fee reduction.

[224] Maurice argued that the justification for their compensation is that their hourly legal fees were reduced by 50% under the Flood/Ag Retainer. Maurice states that they do not profit from the reduced hourly fees and require the contingency fee to earn a profit.

[225] Beardy's argued that while it is true that Maurice was billing at a reduced hourly rate, Maurice billed so many hours and fees that the discounted hourly rate is meaningless. They argue the hours billed on the Flood Claim and Ag Benefits Claim are "outrageous" and counteract any notional discount in rate. For example, Beardy's queries the notion that Maurice could not turn a profit from billing approximately \$72,000 on a ten-page claim or when billing \$490,000 on a single claim submission.

[226] The expert evidence of Mr. Knoll was of assistance here. He opined that, had Maurice billed within reasonable parameters, the legal budget provided by the loan and insurance program would have been more than sufficient to pay the legal fees on a fee-for-service model. Furthermore, additional funding sources were available through

the FSIN and Canada.

[227] Maurice states that any legal fees and loan liabilities Beardy's incurred through the litigation financing program is insured through AmTrust. Maurice argued that the insurance premiums are paid to de-risk the potential losses of an unsuccessful claim, and without the litigation financing program, advancing the Flood Claim and the Ag Benefits Claim would not have been possible. Maurice argued they have often been successful at recovering all or most of the costs incurred through the litigation financing program.

[228] Maurice states that its compensation is significant, but it appropriately compensates for the risk taken, the time expended, and the results achieved. Maurice provided little by way of explanation for the fee model, which includes billing on an hourly rate, a loan and insurance policy, and a contingency fee. The caselaw requires the client to understand the nature and effect of a retainer agreement and the rationale for that agreement. In that explanation, the client is entitled to an explanation of other fee arrangements that may be available to them (*Sakimay* at para 55).

[229] Maurice did not explain what other fee arrangements might be available to Beardy's. Beardy's did not understand the nature and effect of the Flood/Ag Retainer. Little explanation was offered, and what was provided by Maurice came after Beardy's signed it. Further, I accept the evidence from Mr. Seesequasis and Chief Ananas that they believed it was the only way Maurice would proceed with their claims.

[230] I accept Beardy's argument that the Flood/Ag Retainer is unfair and unreasonable, particularly in light of the loan and insurance program. In exchange for a 50% reduction in hourly fees, Maurice is entitled to a contingency fee. The logic behind the contingency agreement, as I understand, is to defray the risk occasioned by Maurice for carrying the files for many years and to ensure that Maurice will be compensated for the work. With the loan and insurance program, Maurice had zero risk

of not being paid, and indeed, was paid along the way. Given those circumstances, it is unclear what the justification would be for a contingency fee arrangement.

[231] In consideration of the *Ralston/Harrington* factors, the Flood/Ag Retainer is unreasonable. Beardy's had access to three sources of funding. It is unclear why Maurice determined that Beardy's was unable to pay to advance the Flood Claim and the Ag Benefit Claim. As noted, Maurice bore no risk and was paid along the way, even for disbursements. It is acknowledged that the issues were complex, and Canada had experienced, skilled counsel. As well, Maurice was experienced and provided skilled representation. The matters were important to Beardy's.

[232] Maurice encounters difficulties with the time recorded on the claims. Beardy's argued that Maurice generated exorbitant legal fees to create a problem that was only solved through the loan and insurance program and contingency fees.

[233] Maurice denies that the time entries on the Flood Claim and the Ag Benefits Claim are inflated. While Maurice acknowledges that the Ag Benefits Claims among several First Nations have similarities, each has its own unique set of circumstances and requires a high degree of skill and specificity to ensure the claim reflects the unique circumstances.

[234] Maurice says that the work on the Flood Claim and a review of the work completed by Maurice in general defeats the notion that Maurice's involvement was so limited and straightforward. Further, the contingency fee sought by Maurice is lower than some other contingency fee agreements.

[235] Maurice says their work on the Ag Benefits Claim was not seven years of billing to draft a 10-page declaration of claim, as alleged. A review of the work completed for Beardy's defeats the notion that Maurice's work was so simple.

[236] Maurice acknowledged that at the time the Flood/Ag Retainer was

executed, the outstanding legal fees of hundreds of thousands of dollars, and Beardy's having no other way to pay, were likely a part of the discussion. Maurice also confirmed that they did not discuss other billing arrangements or options with Beardy's. However, Maurice says that Chief and Council could review and consider the retainer before signing it, and Maurice was available to answer any questions.

[237] Beardy's argued that Maurice billed at a reduced hourly rate but recorded so many hours and fees that the discounted hourly rate is meaningless. They claim the hours billed counteract any notional discount in the hourly rate.

[238] Maurice recorded 338 hours drafting the declaration of claim. Beardy's argued that the Ag Benefits Claim was subjected to obscene amounts of hours and resulting legal fees over the next four years to prepare a ten-page declaration of claim. Beardy's points to duplicative time entries, excessive hours being recorded, and says the time entries reflect work completed on behalf of some other First Nation clients, without the fees being split.

[239] The remaining hours recorded on the file are related to the Ag Benefits Loan and hiring a historian to produce a historical report. After seven years and \$344,045.84 in legal fees and disbursements, the declaration of claim was filed with the Tribunal in April 2018. Beardy's argued that the final work product is substantially similar to other declarations of claim filed for other First Nations clients.

[240] The Ag Benefits Loan was executed after the declaration of claim was filed. Maurice's first drawdown on July 4, 2018, was for \$739,250.77, and included the \$344,045.84. Later that month, Canada agreed to negotiate the Ag Benefits Claim, and the Tribunal action was stayed. Maurice made quarterly drawdowns from the Ag Benefits Loan to pay hourly legal fees.

[241] Beardy's terminated Maurice in January 2021. By then, the Ag Benefits

Claim was stayed pending negotiations with Canada, which had been working on a formula to standardize agricultural benefits claims settlements across other treaties.

[242] The contingency fees on the Ag Benefits Claim are estimated to be \$5,250,000, and the contingency fee on the Flood Claim is estimated at \$500,000.

[243] Maurice notified Beardy's that an outstanding liability had been incurred on two loans with RBC concerning previous legal fees paid to Maurice on the Flood Loan and the Ag Benefits Loan. The outstanding amount on the Flood Loan was \$1,684,473.54 plus a termination premium of \$409,973.06, triggered when Maurice was terminated. The amount outstanding on the Ag Benefits Loan was \$1,101,391.67, plus supplemental and termination premiums of \$536,510.44.

[244] For the reasons noted above, the Flood/Ag Retainer is unfair and unreasonable.

### 7. *Quantum Meruit*

[245] Having determined the Annuities Retainer and Flood/Ag Retainer unreasonable, a *quantum meruit* assessment of legal fees owed to Maurice is appropriate.

[246] I cannot turn back time on the loan and insurance arrangements that Beardy's agreed to. Still, I have considered the contingency agreements on their own and in conjunction with the associated loan and insurance programs. While I have not ignored the liability experienced by Beardy's resulting from the loan and insurance programs, my focus is on the legal fees claimed by Maurice.

[247] At the outset, I determined that the termination provisions of the retainer agreements are unenforceable. The result, then, is that any adjusted legal fees claimed by Maurice are not owed. The adjusted legal fees and associated interest must be

deducted from what is owed to Maurice.

[248] Next, it is acknowledged that Maurice reduced their hourly rates by 50% pursuant to the contingency fee agreements. Noting the arguments that the fees are inflated thereby negating any discount, the rates are still reduced. Fair compensation would see Maurice paid their full hourly rates, under the circumstances. I will address each claim to determine reasonable compensation. As noted, this is not a perfect science.

[249] Beardy's asserts it is entitled to a credit of more than \$1.2 million, which is sufficient to cover any potential fees owed on any of the files on a *quantum meruit* basis. Beardy's calculates the \$1,210,018.64 credit it says is owed by Maurice as follows:

- (i) Salaries Claim: \$826,797.84 paid on the Additional Invoices, improper repayment of FSIN funding, improper transfer to Poundmaker, plus the Legacy Trust market value increase of 46.35% from December 2017 to December 2020, had the funds been in Beardy's possession.
- (ii) Beardy's overpaid the adjusted legal fees on the Ag Benefits Claim of \$32,666.99.
- (iii) Maurice holds \$2,396.49 in Beardy's trust on the Flood Claim.
- (iv) Beardy's was billed \$44,332.34 in duplicate on the Flood Claim.
- (v) Maurice is owed \$50,064.56 for new charges on the Flood Claim.

[250] Maurice says Beardy's is incorrect, misunderstands, and misrepresents the transactions, leading to the conclusion that they are owed \$1,210,018.64. Maurice acknowledges that \$2,395.49 accidentally remained in trust on the Flood Claim and has

accounted for that error in the amount sought by Maurice for payment on the Flood Claim. The total Maurice seeks for payment on the Flood Claim is \$493,125.20.

[251] Maurice states that it is owed the following fair and reasonable fees on a *quantum meruit* assessment (plus interest):

- (i) Salaries Claim: \$370,639.97
- (ii) Flood Claim: \$493,125.20
- (iii) Ag Benefits Claim: \$91,057.51

[252] The fees for the Annuities Claim and Salaries Claim were billed to the same file (file 106.02), which complicates the assessment to some degree; however, the parties have done their best to simplify matters.

(a) *Annuities & Salaries Claims*

[253] Beardy's argued that it is owed a substantial credit from Maurice concerning the Salaries Claim. They claim that the legal fees charged are unfair and unreasonable, and do not align with the level of legal services provided. Apart from the reasonableness of the fees charged, three other issues arise with the Salaries Claim.

[254] The first issue is the improper transfer of funds to Poundmaker and the subsequent erroneous disbursement. The second issue is the apportionment of legal fees amongst Maurice's clients, given the practice of charging collective fees to the Beardy's file. Finally, the issue of the erroneous partial repayment of FSIN Funds for other Maurice clients from Beardy's trust funds. All three issues, they say, are purely mathematical.

[255] Beardy's argued that the disbursement of \$172,834 ought to be cancelled. That would reduce the balance on invoice #5657 to \$35,187.98 and affect the interest

accruing under the invoice.

[256] Maurice submitted that the invoices it rendered to Beardy's are appropriate, save and except for the acknowledged errors. Maurice argued that all the work billed on the Annuities Claim and the Salaries Claim was for the benefit of Beardy's and the benefit of the Rebellion Nations involved in the claims. Work that was specific to other First Nations, including Beardy's, was billed to their files under their retainer agreements. Maurice submits that it used its best efforts to bill time and disbursements to the appropriate matters, but acknowledges that some mistakes were made.

[257] Beardy's argued that the group fees for other clients were inappropriately attributed to the Beardy's file. The evidence shows that there was an agreement between the Rebellion Nations to share the costs to advance the Beardy's Annuities Claim as a "test case". Maurice admits that the collective fees were billed to Beardy's and paid from the Beardy's trust account. It was administratively simpler to bill the collective fees to the Beardy's file, but Maurice was to apportion the cost among the Rebellion Nations.

[258] Some of the Rebellion Nations contributed to Beardy's trust account to pay accruing legal fees on file 106.02. Maurice erroneously believed the costs were fully recovered through the Annuities Claim costs award. The fact that only some of the Rebellion Nations contributed cash to the Beardy's trust account and the erroneous assumption that costs were fully recovered led to Maurice recommending that Beardy's refund the contributions to the Rebellion Nations who had contributed.

[259] The result, Beardy's argued, is that the fees were not apportioned properly upon resolution of the Annuities Claim because Maurice believed they had obtained full recovery of the expenses. Maurice generally acknowledges the errors, indicating that they were planning to address these issues upon resolution of the Salaries Claim,

but were terminated before resolution and never had the opportunity to do so.

[260] Maurice states that Beardy's misrepresents what they paid to Maurice on the Salaries Claim. Maurice argued that the funds were paid as follows:

- (i) June 23, 2016, after receipt of Canada's \$55,000 cost contribution, and contributions from Red Pheasant and Mosquito Grizzly Bear's Head Lean Man First Nation, Beardy's paid \$236,894.67 from their trust account;
- (ii) On February 21, 2017, after receipt of contributions from Lucky Man, Onion Lake, and Little Pine (totalling \$809,537 inclusive of previous contributions from First Nations), Beardy's paid \$324,527.39 from their trust account; and
- (iii) On February 21, 2017, Beardy's received the settlement award of \$4,580,522.35.

[261] In total, Beardy's paid \$561,422.06 in extra fees and disbursements before receiving its award over two years. Shortly after the settlement payment was made, Sweetgrass contributed \$236,617, increasing the total contributions from other First Nations to \$1,048,154.

[262] After Maurice received its contingency fee but before Beardy's received its settlement on costs, Beardy's paid three invoices:

- (i) April 12, 2017: Beardy's paid \$83,365.93 from their trust account. The trust funds included Sweetgrass's contribution;
- (ii) June 29, 2017: Beardy's paid \$74,688.34 from their trust account; and

- (iii) October 5, 2018: Maurice applied trust funds of \$19,277.49 to outstanding invoices.

[263] Maurice argued that Beardy's did not pay \$636,110.40 for the Additional Invoices. They say the Additional Invoices were paid from Beardy's trust account following the contributions from other First Nations.

[264] Maurice states that the FSIN funding of \$265,250 was owed back to FSIN. Each First Nation received \$18,961.55 for a total of \$132,730.85, and each First Nation was responsible for repaying its respective share. Maurice states that Beardy's retained \$113,269.15 of the FSIN money, which was more than their costs that were fully paid and should have remitted the funds back to FSIN. It is unclear how this amount fits in with the *quantum meruit* assessment.

[265] Maurice admits the error in transferring \$172,834 to the Poundmaker trust account instead of Beardy's trust account on November 20, 2017. While a second error occurred where another \$172,834 was deposited into the Poundmaker trust account, only one of the errors impacted Beardy's. As a result, Beardy's is entitled to \$172,834 set off.

[266] Beardy's disputes Maurice's argument that the Poundmaker payment set off is only \$172,834. They argue the charge of \$172,834 must be cancelled and Maurice must return the \$172,834 it erroneously gave to Poundmaker. Maurice fails to account for the erroneous disbursement of \$172,834 contained in the Salaries Invoices. This erroneous disbursement forms a part of the \$370,639.97 claimed by Maurice on the Salaries Claim. Finally, Maurice fails to address that Beardy's specific fees on the Salaries invoices amount to \$10,000, and the remainder is group fees. Maurice fails to acknowledge that the disbursements have already been paid on all invoices in the Beardy's proceedings.

[267] I do not accept Maurice's argument respecting the duplicate entries on the Salaries Claim. A review of the invoices shows, for example, an entry on October 18, 2019, where a lawyer billed for 25 hours in one day. This is not possible. Maurice himself admitted on cross-examination that many of the entries were duplicates.

[268] Furthermore, I found the invoicing terribly confusing. Invoices issued before termination included hourly rates without any discount as contemplated in the Annuities Retainer. It is unclear why these invoices issued before termination were not discounted, notably when Maurice argued the Salaries Claim was included in the Annuities Retainer. Maurice had discounted all hourly rates included in the Annuities Claim.

[269] On March 10, 2020, Maurice issued an invoice for \$6,220.70 for legal fees without discount and \$33,070.14 in interest, partly from the erroneous Poundmaker disbursement. On termination, Maurice issued an invoice dated March 17, 2021, for \$31,208.97, plus a previous balance of \$514,242.68 of earlier invoices. The final invoice charged interest of \$133,585.28 on the outstanding balance of \$679,036.93. Maurice agreed to a courtesy discount, reducing the invoice to \$370,639.97.

[270] Maurice disagrees with Beardy's assertion that it miscalculated the amount of Beardy's recovered costs on the Salaries Claim where they say money is owed to Beardy's.

[271] The evidence supports Beardy's argument in respect of the Annuities Claim calculations. First, Maurice must account for the improper transfer of funds to Poundmaker and the erroneous disbursement for the same. Second, the apportionment of legal fees among the Rebellion Nations was incorrect. Third, the erroneous repayment of FSIN Funds for other clients must be corrected.

[272] The Poundmaker disbursement invoiced to Beardy's must be cancelled.

This reduces the amount owed on invoice #5657 (dated September 30, 2019) and eliminates the accrued interest.

[273] The group fees attributed to Beardy's file 106.02 were paid by Beardy's alone. The evidence filed herein shows that the Rebellion Nations involved had agreed to share the costs of the Beardy's "test case". It is possible that Maurice believed the Rebellion Nations could cover the accruing legal fees, but they sought funding through the FSIN and the loan and insurance program. While it was likely administratively simpler to bill Beardy's file 106.02, the costs were to be apportioned amongst the Rebellion Nations.

[274] Not all the Rebellion Nations contributed to Beardy's trust account to pay legal fees. Further exacerbating the issue, Maurice erroneously advised Beardy's that the legal costs were fully recovered, causing the erroneous recommendation to Beardy's to refund the contributions to the Rebellion Nations who contributed.

[275] The fees were not apportioned on the resolution of the Annuities Claim because Maurice believed it had fully recovered the costs. To resolve this issue, we must determine the group fees paid by Beardy's and calculate the credit. Beardy's paid the Additional Invoices. I do not accept Maurice's argument that the Additional Invoices were for work done solely for Beardy's. On review of the evidence, and in consideration of the mistakes made by Maurice, I accept that the Additional Invoices were for the benefit of the group.

[276] Beardy's paid \$636,110.40 on the Additional Invoices for the collective benefit of the Rebellion Nations. Applying the same percentage of the fees and group fees allocated in the Salaries Claim invoices results in 2.68% being attributable to Beardy's alone, and 97.32% as group fees. Calculated using the total invoice amount, \$17,071.40 is Beardy's specific fees, and \$619,039 is group fees.

[277] Beardy's relative share of the group fees considers two issues. The first involves how many Rebellion Nations the group fees are to be shared with. At that time, there were 10 Rebellion Nations to share the fees. Second, we then consider the relative size of the settlement obtained, or an equal split based on the number of clients. I agree with Beardy's that the equal split is appropriate, and it generally accords with the understanding of "sharing" costs. Divided equally, the group fees for the Additional Invoices equals \$61,903.90 for each Rebellion Nation.

[278] Adding Beardy's specific fees of \$17,071.40 to Beardy's share of the Additional Invoices is \$78,975.30 ( $\$61,903.90 + \$17,071.40$ ). Beardy's paid the full \$636,110.40, resulting in a credit of \$557,135.10 ( $\$636,110.40 - \$78,975.30$ ) in overpaid group fees on file 106.02.

[279] Then, invoices on the Salaries Claim need to be adjusted for the group fees and fees specific to Beardy's. The parties agree that \$10,000 is attributable to Beardy's specific fees, leaving \$362,617.75 in group fees. 14 Rebellion Bands were involved in the Salaries Claim, which calculates to \$25,901.26 each ( $\$362,617.70 / 14$ ).

[280] Beardy's total share for legal fees on the Salaries Claim is then \$35,901.26 ( $\$25,901.26 + \$10,000$ ). Interest ought to be paid on this amount. Applying this amount owing (less the interest) to Beardy's total credit ( $\$557,135.10 - \$35,901.26$ ) leaves Beardy's total credit so far as \$521,233.84.

[281] Beardy's argued that this credit offsets any fees from the final invoices and eliminates any interest owing. I agree. Interest is not owed where there is no balance due.

[282] Turning back to the repayments to the FSIN Funds of other Rebellion Nations from Beardy's trust account. It is understood that the payments were made to apportion the costs of the Annuities Claim, but Maurice had not recovered full

indemnity for costs as they had thought. I agree with Beardy's that an adjustment is now required because repayment of other Nations' FSIN Funds should not have been paid from Beardy's trust funds.

[283] The credit to Beardy's for this issue is \$132,730, making the total credit to Beardy's so far \$653,963.84 (\$132,730 + \$521,233.84).

[284] I accept that Maurice mistakenly refunded money to Poundmaker that it had not received from Poundmaker. The improper disbursement of \$172,834 ought to be credited to Beardy's, bringing the total credit to \$826,797.84 (\$172,834 + \$653,963.84).

[285] Beardy's has asked for what was lost by not having the funds it is owed from Maurice in its Legacy Trust account. While I accept that Beardy's was unable to realize on the funds in the Legacy Trust, I do not have a full and accurate accounting of fees and what is owed to Beardy's resulting from overpayments. In performing 'rough justice' calculations on the fee assessment, I am uncomfortable extrapolating that to what may have been lost. The calculation would require additional evidence and perhaps an expert evaluation.

[286] Therefore, the total credit to Beardy's is \$826,797.84, less the interest owing on Beardy's share of the Salaries Claim invoices (\$35,901.26).

*(b) Flood Claim & Ag Benefits Claim*

[287] Beardy's states that no amount is owed to Maurice on the Ag Benefits Claim or the Flood Claim. They say the amounts already paid to Maurice are more than sufficient to compensate Maurice for the work completed fairly.

[288] Beardy's argued that the hourly fees on the Flood/Ag Retainer ought to be reduced. They say the way it was administered resulted in excessive and inflated

hourly fees, which are now claimed in “adjusted fees” following Maurice’s termination. As noted, adjusted fees and associated interest must be deducted.

[289] On the Flood Claim, \$391,384 is adjusted legal fees following termination. Beardy’s says the fees come from the 1,647 billable hours incurred to update a 100-page brief, following invoicing of \$47,963.75 for the same task. Maurice charged Beardy’s \$367,000.37, that was discounted by 50% to update a legal submission that was already paid for through FSIN funding years earlier. With the removal of the 50% discount, the fees would total \$734,000 for a 100-page legal brief.

[290] On the Ag Benefits Claim, to file a declaration of claim which is substantially similar to other agricultural benefits claims filed by Maurice for other First Nations, hire an expert, and take preliminary steps in litigation before the Tribunal, Maurice charged and received \$521,889.08. Beardy’s says that this amount overcompensates Maurice for legal services on the Ag Benefits Claim.

[291] I agree with Beardy’s that the time recorded and fees invoiced on the Ag Benefits Claim and the Flood Claim are excessive. Had Maurice recorded reasonable time and accrued reasonable costs on the Flood Claim and the Ag Benefits Claim, it would have been appropriate to reverse the discounted fees and compensate Maurice at full hourly rates. However, under the circumstances, the discounted fees charged are excessive.

[292] In consideration of the *Ralston/Harrington* factors and assessing Maurice’s fair and reasonable fees on both the Ag Benefits Claim and the Flood Claim, nothing further is owed by Beardy’s. Maurice had been well compensated for the work done. Maurice exercised the necessary skill and diligence, providing competent legal services. The work completed was and is important to Beardy’s; however, the compensation Maurice received is reasonable. I have considered the expert evidence of Mr. Knoll on this issue, and comparatively speaking, Maurice’s compensation on both

the Ag Benefits Claim and the Flood Claim is generous under the circumstances.

[293] Finally, Maurice holds \$2,396.49 in Beardy's trust on the Flood Claim. Maurice must reimburse Beardy's this amount.

### **E. One Arrow First Nation**

[294] As in the Beardy's matter, Maurice argued that the One Arrow Annuities Retainer encompassed the Salaries Claim. Maurice states that the Annuities Retainer contemplated two phases of litigation, the first for compensation in the Annuities Claim and the second phase being the Salaries Claim. One Arrow disputes this and argues that the Annuities Retainer does not apply to the Salaries Claim.

[295] One Arrow questions whether a contingency fee is payable to Maurice in respect of the Salaries Claim. Maurice argued that a contingency fee is appropriate. Further, One Arrow argues that the Western Boundary Retainer is unfair and unreasonable.

#### ***1. Application of the Annuities Retainer to the Salaries Claim***

[296] Where applicable, my comments in respect of the application of the Beardy's Annuities Retainer to the Beardy's Salaries Claim apply here.

[297] The Beardy's Annuities Retainer is worded slightly differently than the One Arrow Annuities Retainer, but the same issue exists. I have attempted to reduce repetition where possible, but have relied on similar documents and evidence as noted in the Beardy's Application, where it applies to One Arrow.

[298] Maurice states that it was well known that the One Arrow Salaries Claim would not be advanced until there was success on the Beardy's Annuities Claim. Maurice argued they had an understanding with One Arrow that when liability was established in the Beardy's Annuities Claim and applied to One Arrow, it would pave

the way for settlement of the Salaries Claim as a separate head of damage arising from the same cause of action.

[299] The parties dispute whether One Arrow instructed Maurice to pursue the Salaries Claim on May 5, 2017, or if Maurice carried on without instructions. Maurice states that they were authorized to pursue the One Arrow Salaries Claim as the next phase of the litigation and spent significant time and resources pursuing it.

[300] Maurice argued that para. 3 of the One Arrow Annuities Retainer is determinative on the application of the Salaries Claim:

3. The Client does hereby retain and employ the Law Firm to act on behalf of the Client in relation to the unlawful termination of treaty annuity payments owed to the First Nation by the Crown (hereafter referred to as the “Claim”). The Law Firm hereby accepts such retainer and engagement in relation to the Claim and any other matter that the Law Firm is from time to time retained by the Client to act on its behalf.

[301] Maurice argues the plain language of the Annuities Retainer allows it to apply to “any other matter” such as the Salaries Claim. Further, Maurice says that, before executing the Annuities Retainer, they spoke to One Arrow about the claims on several occasions. One Arrow knew Maurice was working on the Salaries Claim, and Maurice says it is unreasonable for One Arrow to say now that they expected Maurice to proceed without the work being covered by the existing Annuities Retainer.

[302] Chief Gamble averred to a discussion around the strategy for advancing the Annuities Claims and Salaries Claims occurring at the Annual Treaty No. 6 gathering. Chief Gamble states that One Arrow’s former Chief Dwayne Paul was in attendance, concluding that One Arrow was aware that the claims were not limited to the Annuities Claim (Gamble Affidavit 2022). It is unclear how Chief Gamble can speak to One Arrow Chief and Council’s knowledge, and Chief Gamble’s reference to a conversation with then-Chief Paul is hearsay.

[303] Maurice argued that Mr. Smart acknowledged during cross-examination that he was aware that Maurice was pursuing the Salaries Claim (Transcript, cross-examination of Mr. Smart, T48 Lines 3-9). While One Arrow argued that Maurice pursued the Salaries Claim without explicit instructions to do so, the larger issue for One Arrow is the terms under which Maurice would be pursuing the Salaries Claim. I accept that One Arrow was aware and instructed Maurice to pursue the Salaries Claim.

[304] Maurice states that there is no evidence before the Court to suggest the Annuities Claim and Salaries Claim were treated as separate claims.

[305] One Arrow argued that Canada viewed the Annuities Claim and Salaries Claim as separate claims. However, Maurice points to a press release dated August 1, 2023, where Canada announced its settlement with 14 First Nations, including One Arrow, and specifically mentioned the Annuities Claims and Salaries Claims (Answers to Questions on Interrogatories dated July 18, 2023):

**News release**

For immediate release

**Canada settles Treaty Salaries specific claims with fourteen First Nations under Treaty 4 and Treaty 6**

...

... the settlements of fourteen Treaty Salaries specific claims. This achievement marks a significant step toward rebuilding Canada's relationship and addressing the wrongs done to these communities.

These claims concern Canada's withholding of annuity payments and salary payments for Chiefs, Headmen and Councillors under Treaty 4 and 6 and occurred between 1885 and 1951. These amounts were withheld as a result of these First Nations' purported involvement in the North-West Resistance.

...

[306] Maurice argues that Canada's inferred position from the press release is that the claims are intrinsically linked to each other. In my view, Canada's understanding of whether the claims were tied together is irrelevant. It is not apparent from the news article that Canada understood the claims to be connected to any larger degree than being two of the Rebellion losses claims. Canada's understanding is not the same as One Arrow's, and my focus is on One Arrow.

[307] Chief Gamble's evidence, referred to in the Beardy's matter, applies here. While I acknowledge that Chief Gamble averred to his understanding that the Salaries Claim would be pursued as a joint pursuit with the Annuities Claim, it is not clear to me that he understood that the Salaries Claim would be pursued under the terms of the Annuities Retainer. Based on the analysis in Beardy's matter on this same issue, I have difficulty understanding from the documents that the Annuities Claim and the Salaries Claim were two phases of the same litigation and captured by the same retainer agreement. The affidavit evidence on this point is thin, and, as noted in the Beardy's portion, Chief Gamble's evidence is not supported by the documents attached to his affidavits.

[308] On review of the Annuities Retainer, I fail to see how it could be construed as encompassing the Salaries Claim.

[309] For the Salaries Claim to be included in the Annuities Retainer, the agreement would have to state such clearly. In my view, the Annuities Retainer leaves open the potential that other claims might be included in its retainer, but no other specific claim is mentioned. No evidence has been provided to suggest that there were additional documents, conversations, or considerations given to other claims that might be included in the Annuities Retainer.

[310] One Arrow has also pointed to a difference in the wording of para. 3 of the Beardy's Retainer agreement, where it states:

3. The Client does hereby retain and employ the Law Firm to act on behalf of the Beardy's and Okemasis First Nation in relation to the unlawful termination of treaty annuities and failure to provide other treaty benefits owed to the First Nation by the Crown (hereinafter referred to as the "Treaty Benefits Claims"). ...

[311] The scope of the One Arrow Annuities Retainer speaks about the termination of treaty annuity payments and refers to this as the singular "Claim." The plain language of the Annuities Retainer shows the scope being one claim, the Annuities Claim, only.

[312] In consideration of the requirement that a retainer agreement be unequivocal in respect of what the agreement covers, the Annuities Retainer cannot be said to authorize a contingency fee on the Salaries Claim. I agree with One Arrow that a plain reading of the Annuities Retainer does not entitle Maurice to a contingency fee on the Salaries Claim.

## ***2. Contingency Fee on the Annuities Claim***

[313] Maurice seeks a contingency fee from One Arrow in respect of the Annuities Claim. One Arrow takes issue with this, arguing that the terms of the Annuities Retainer have not been met, and a contingency fee is not payable to Maurice.

[314] The One Arrow Annuities Claim was resolved without the need for litigation. However, Maurice asserts they are entitled to the 12% contingency fee because the claim's success followed their success in the Beardy's Annuities Claim.

[315] Maurice says it is entitled to the 12% contingency fee because of the precedent set by the Beardy's "test case". Maurice says that the settlement negotiated on behalf of Beardy's and the settlement on behalf of One Arrow are identical in substance and liability. Without the efforts of Maurice to advance the "test case", including by appearing before the Tribunal, One Arrow's costs for advancing their

claim would have been astronomically higher.

[316] Relying on s. 9 of the Annuities Retainer, Maurice argues the 12% contingency fee applies where any compensation is paid by Canada to One Arrow, in consideration of Maurice's expertise:

9. In addition to the hourly fees payable in accordance with this Agreement, the Client agrees to pay the Law Firm a contingency fee based on a percentage of any compensation paid by Canada to the Client as a final settlement, agreement or judgment in consideration of the expertise provided by the Law Firm and a discount of its regular hourly rates. The contingency fee shall be calculated as follows:

(a) 6% of any settlement or judgment obtained after the filing of an action or proceeding before the courts or the Specific Claims Tribunal; or

(b) 12% of any settlement or judgment obtained after commencement of a hearing or trial before the courts or the Specific Claims Tribunal.

[317] Maurice provided a briefing note to One Arrow on October 28, 2018 [October 2018 Briefing Note], which claimed that One Arrow's Annuities Claim had proceeded to the Tribunal when it had not. Maurice then sought the 12% contingency fee, as outlined in the Annuities Retainer. However, the October 2018 Briefing Note did not explain that it was Beardy's Annuities Claim, not One Arrow's claim, which was litigated before the Tribunal. One Arrow then paid the requested \$259,319.12 to Maurice. The hourly fees billed to One Arrow at full hourly rates on the Annuities Claim were \$105,418.74.

[318] On the plain wording of the Annuities Retainer, it is unclear on what basis Maurice is seeking the 12% contingency fee. The matter was resolved without the need to commence a hearing or trial. The fact that the Beardy's Annuities "test case" proceeded to a hearing does not apply to One Arrow. The Annuities Retainer mentions nothing about the Beardy's "test case", nor any term or condition binding the

contingency to the Beardy's "test case". For the Annuities Retainer to apply in this manner, it would have to state as much explicitly.

[319] Moreover, Maurice's request for the 12% contingency fee is illogical. One Arrow contributed to the costs of the Beardy's "test case" for this exact reason: to save on legal fees. If One Arrow was required to pay a contingency fee based on what happened in the Beardy's matter, there would be no cost savings.

[320] A contingency fee is not payable by One Arrow to Maurice in respect of the Annuities Claim.

### ***3. Is the Annuities Retainer Fair and Reasonable?***

[321] My decision that the Salaries Claim is not encapsulated by the Annuities Retainer is dispositive of this issue, as One Arrow has not challenged the Annuities Retainer as it relates to the Annuities Claim. If I am incorrect on that issue, I make the following observations.

[322] In general, the terms of the Annuities Retainer executed in December 2011 indicate that Maurice would represent One Arrow about the termination of annuity payments and any other matter Maurice was retained to act on One Arrow's behalf (para. 3). Maurice would be paid for their services, and a contingency fee is payable at specific points.

[323] I will not address the termination provisions, having deemed them unenforceable.

[324] Neither Mr. Maurice nor a representative from Maurice had ever met with the One Arrow Chief and Council prior to their executing the Annuities Retainer. Mr. Maurice had met with various Chiefs or their proxies at FSIN meetings, but did not explain specifics of the retainer agreement.

[325] On October 21, 2011, the Annuities Retainer previously delivered to the FSIN was re-sent to One Arrow for review and execution. Maurice argued that in the time between 2007 and 2011, One Arrow had ample opportunity to review and consider the Annuities Retainer, ask any questions they may have, and obtain independent legal advice. On December 16, 2011, Elder Esperance, a non-lawyer, met with One Arrow to have the Annuities Retainer executed.

[326] Maurice was unaware if Elder Esperance ever mentioned the Salaries Claim when he attended One Arrow for the execution of the Annuities Retainer. Elder Esperance has not provided any evidence about what he told One Arrow regarding the Salaries Claim or the cost sharing under the retainer agreement.

[327] On May 3, 2018, Maurice emailed BCR's authorizing settlement of the Annuities Claim to Mr. Smart for execution by One Arrow. The BCRs directed the settlement funds through Maurice's trust account, with any outstanding fees to be deducted by Maurice before the balance being transferred to One Arrow. Mr. Smart then inquired about the fees that would be deducted and was told that there was approximately \$270,000 in hourly fees and a 12% contingency fee.

[328] Mr. Smart requested a copy of the executed Annuities Retainer. One Arrow states that this was the first time it received the fully executed agreement. Maurice then sent two revised invoices to One Arrow requesting payment of \$329,666.17.

[329] After receiving a letter expressing concern over the fees charged, Maurice emailed Mr. Smart on October 9, 2018, providing a breakdown of costs in advance of a scheduled meeting between Chief, Council, and Maurice. Maurice provided a revised settlement invoice, writing off all hourly fees (\$105,418.74) and charging a 12% contingency fee of \$244,653.46 plus \$14,665.66 in disbursements, totalling \$259,319.12.

[330] On the evidence before the Court, One Arrow understood that Maurice would proceed with the Annuities Claim on a contingency agreement only if they were unsuccessful in obtaining federal funding. Unfortunately, the federal funding received was less than hoped for or anticipated.

[331] The Annuities Claim was accepted for negotiation by Canada and was settled within the same year. Maurice attributes the One Arrow Annuities Claim settlement to Maurice's advocacy through hard-fought litigation before the Tribunal on behalf of Rebellion Nations in the Beardy's "test case". Maurice states that the Specific Claims Branch and Canada were aware that the Beardy's "test case" should be applied uniformly, and Canada and Maurice treated the Annuities Claims as being jointly advanced after having received the benefit of the reasons from the Tribunal.

[332] While Maurice's argument regarding its efforts to litigate the Beardy's "test case" is valid, the arguments do not assist Maurice here. The involved Rebellion Nations and Maurice contemplated that the Beardy's Annuities Claim would be costly litigation. The cooperating Rebellion Nations agreed to cost-share the litigation – an approach promoted by Maurice – in hopes of saving costs on their claims.

[333] Maurice argued that One Arrow received the benefit of the Beardy's Annuities Claim litigation. Maurice acknowledges that the One Arrow Annuities Claim did not proceed to the Tribunal but says that to deny the contingency fee is relying on a technicality and out of line with the Annuities Retainer. I disagree. The Annuities Retainer is clear that the 12% contingency fee is payable if the matter is litigated before the Tribunal or the courts. It was not. While One Arrow may have received the benefit of some of the work in the Beardy's Annuities Claim, that was the point of the cost-sharing arrangement and a "test case".

[334] However, Maurice reviewed its invoices, and in considering the "test case" costs, Maurice assessed the amount owing for fees and disbursements at

\$329,666.17 for the Annuities Claim. Maurice says it ultimately agreed to accept \$259,319.12 as full and final payment on the Annuities Claim.

[335] While I am critical of the fairness and reasonableness of the Annuities Retainer, Maurice appropriately addressed One Arrow's concerns. While One Arrow believes its compensation to Maurice in the Annuities Claim may have been over generous, the issues were satisfactorily resolved through negotiations with Maurice. The parties are to be credited for their efforts in this regard.

#### **4. *Salaries Claim***

[336] After liability and compensation were determined in the Annuities Claim, Maurice proceeded with the Salaries Claim on One Arrow's behalf. Maurice filed a 16-page briefing note with the Specific Claims Branch on December 17, 2017. The said briefing note sought the settlement of the Salaries Claims for each of the Rebellion Nations it represented. On April 18, 2018, a seven-page briefing note was filed with the Director General of the Specific Claims Branch, again advocating for all the Rebellion Nations represented by Maurice.

[337] Following Maurice's termination by One Arrow, the current legal counsel continued negotiations of the Salaries Claim and successfully resolved it for \$2,209,281.

[338] Given that my findings indicate the Salaries Claim is not encompassed by the Annuities Retainer, the fees for the Salaries Claim shall be assessed on a *quantum meruit* basis.

#### **5. *Is the Western Boundary Retainer Fair and Reasonable?***

[339] In 2004, the FSIN retained Maurice on a flat fee basis to draft a claim submission on behalf of One Arrow. Maurice prepared a 100-page claim, setting out

the historical background and legal basis for the Western Boundary Claim. Maurice described this work as some of the heaviest lifting on the file (Transcript, cross-examination of Mr. Maurice, T244 Line 21-T245 Line 4; and T253 Lines 5-9). The FSIN paid Maurice \$12,350 for this work.

[340] In January 2011, One Arrow requested and received a briefing note from Maurice on the Western Boundary Claim. On June 25, 2013, One Arrow directed the FSIN to submit the Western Boundary Claim under Canada's Specific Claims Policy. In September 2013, Maurice provided One Arrow another briefing note, like the one provided in 2011, but with the addition of the Western Boundary Retainer and recommended litigation financing and insurance.

[341] Maurice filed the Western Boundary Claim with the Specific Claims Branch on April 7, 2014. One Arrow states that the submission was identical to the 2004 submission, with some minor modifications. One Arrow says that Maurice was paid, in full, by FSIN for this work.

[342] Maurice states that it had contributed a substantial number of hours before the Western Boundary Retainer was signed in April 2012, and that it had been underpaid by the FSIN.

[343] Between April 11, 2014, and April 14, 2014, Mr. Maurice spoke with One Arrow Councillor Kevin Paintednose about the Western Boundary Retainer. Then, on April 23, 2014, One Arrow executed the Western Boundary Retainer. Maurice received the executed Western Boundary Retainer on May 14, 2014.

[344] Most of the terms of the Western Boundary Retainer are like the Annuities Retainer, but the contingency fee scale differs. The Western Boundary Retainer includes a contingency fee of 4% of any settlement obtained through negotiations under the Specific Claims Policy, 6% of any settlement or judgment

obtained after filing an action or proceedings before the courts or Tribunal, or 10% of any settlement or judgment obtained after commencement of a hearing or trial. Further, any compensation payable to One Arrow by Canada would be paid into the One Arrow Legacy Trust, and the Legacy Trust would pay Maurice the contingency fee in five equal instalments, the first within seven days. The remaining payments would be subject to 5% interest per annum.

[345] The Western Boundary Retainer included the option for a specialized loan, as well as an insurance policy to secure the loan if a settlement was unsuccessful. One Arrow declined to pursue the loan and insurance option.

[346] Maurice states that One Arrow asked him to cap his fees at \$500,000, to which he initially agreed. Maurice states that this was agreed to on the basis that there may be some limited funding from Canada if the claim is accepted for negotiation. If that condition was satisfied, Maurice agreed to apply the 50% discount to the fees if payments on account were made within 30 days.

[347] On April 26, 2014, Canada accepted the Western Boundary Claim as meeting the minimum standards for consideration under the Specific Claims Policy. Canada then had three and one-half years to consider the claim. One Arrow asserts that it remained in a holding pattern during that time until September 12, 2017, when Canada rejected the claim for negotiation. Maurice filed a declaration of claim with the Tribunal on May 6, 2019.

[348] On September 3, 2014, Mr. Smart, on behalf of One Arrow, requested a revised Western Boundary Retainer to reflect the agreed-upon fee cap. At that point, Maurice declined to cap its fees at \$500,000.

[349] On or about March 4, 2000, One Arrow terminated the Western Boundary Retainer with Maurice. Current legal counsel is pursuing the Western Boundary Claim.

[350] The Western Boundary Retainer includes a termination provision similar to the Annuities Retainer. I have previously deemed the termination provisions unenforceable.

[351] One Arrow argued that the Western Boundary Retainer is unfair and unreasonable. It was entered into in 2014 after the heaviest lifting had been completed, and the claim did not advance until 2019, when federal funding became available to cover the legal costs. One Arrow argued that the claims process had largely stabilized since 2011, as outlined in the *Specific Claims Tribunal Act*, SC 2008, c 22, so the risk carried by Maurice was minimal.

[352] In his expert report, Mr. Knoll described the process. The first stage is the preparation and submission of a claim under the Specific Claims Policy. This stage involves historical review and legal research that represents some of the heaviest lifting on the file. The historical record must be researched, summarized, and condensed into a legal claim. After the claim is submitted, there is a three-year waiting period during which Canada will review and assess the claim and determine whether it wishes to negotiate.

[353] Maurice completed the legal submission for the Western Boundary Claim in 2004 when the FSIN retained them. While there is some suggestion that FSIN underpaid Maurice for the value of the service provided, it was an agreement that One Arrow was not a party to.

[354] Mr. Knoll opined that the federal funding was limited but adequate to cover legal costs on a fee-for-service basis. In his view, the similar nature of the claims meant that existing precedents could be used to minimize costs and prevent the need to start over each time a claim is filed. Once a claim is accepted for negotiation, additional federal funding is available to retain experts to calculate losses. If the claim is not accepted for negotiation, as was the case here, federal funding was available to litigate

the matter before the Tribunal.

[355] Maurice takes issue with One Arrow's characterization of the federal funding. Maurice acknowledged that some federal funding is available but argued that the funding was inadequate.

[356] One Arrow asserts that it was unaware that a pure hourly rate was possible for the Western Boundary Claim due to the type of claim it was. One Arrow argued that by 2014, it was unfair to expect them to enter into a blended hourly rate contingency fee agreement on the Western Boundary Claim. The substantive legal work was completed and paid for by 2014, and at that point, One Arrow entered into a three-year dormancy period. Settlement of the claim through a negotiated resolution was a reasonable possibility. By the time Canada rejected the claim for negotiation, federal funding was available to cover some or all legal fees to litigate the claim.

[357] One Arrow argued that there was no risk to Maurice in taking on the Western Boundary Claim on its behalf. After Canada rejected the claim for negotiation, by 2019, federal funding was more generous. One Arrow states that any reasonably informed person in 2014 who understood the claims process, funding, and the work that had been completed and paid for would have used the federal funding to update the existing claim.

[358] Maurice argued that the Western Boundary Retainer is fair because federal funding was limited, and no funding program was in place to cover anticipated fees. At that time, Canada's approach to federal funding posed serious obstacles for First Nations to seek a resolution to their outstanding claims. Maurice says it provided One Arrow with an opportunity to litigate the claim when they otherwise could not.

[359] Maurice further argued that the Western Boundary Retainer is fair and reasonable because of the risk it undertook in taking on the file and the potential that it

may not recover funds paid towards disbursements. Maurice argued, and I agree, that the claim was complex, and it did not have a straightforward path to Canada's liability and the quantum of damages. I agree that Canada was well represented, and Maurice provided competent representation.

[360] I agree that Maurice was exposed to risk in undertaking to represent One Arrow on a contingency fee basis. If there were no settlement or resolution, Maurice would have been entitled to compensation for only 50% of their time expenditures. They say there is no certainty they would have received such payment.

[361] Maurice encourages the Court to also consider the entire circumstances to determine whether the contingency fee agreements are fair and reasonable. Maurice's contingency fees ranged up to 12%, whereas the retainer agreements considered in *Ralston/Harrington* considered agreements in the range of 25-35%.

[362] Maurice denied demanding that One Arrow sign the Western Boundary Retainer. Maurice argued that it was told that One Arrow intended to retain them to advance the Western Boundary Claim, and Bernie Petit, Director of Operations of One Arrow, asked Maurice to circulate a retainer agreement. Maurice argued that he spoke about the details with Councillor Paintednose, and it was at Councillor Paintednose's request that Maurice sent the retainer agreement to Mr. Smart. It was after their discussions that Maurice received the executed Western Boundary Retainer and the corresponding BCR authorizing its execution.

[363] After the declaration of claim was filed in 2019, Maurice says there was an ongoing concern about the lack of funding available for One Arrow. Maurice argued that it was well understood that the costs of a potential claim before the Tribunal would exceed One Arrow's resources.

[364] Maurice states that it considered One Arrow's circumstances and

believed that One Arrow could not afford the cost of litigation on an hourly basis and that available federal funding would not cover the anticipated expenses. Maurice advised One Arrow that they would be prepared to take on the matter on a contingency basis. Maurice states that it did not represent that this was One Arrow's only option, but advises that it was the only option Maurice was comfortable offering to them. In my view, this is a distinction without a difference.

[365] Mr. Smart testified that One Arrow consulted with its lawyer to review the Western Boundary Retainer before signing it (Transcript of cross-examination, November 24, 2022, T 64 Lines 7-12).

[366] Maurice's standard form retainer agreements have since been amended to remove the punitive clauses that were included in the Western Boundary Retainer. While I do not take this as an admission of impropriety by Maurice, it shows that Maurice has taken steps, for whatever reason, to amend its retainer agreements.

[367] While I have concerns about the timing of the Western Boundary Retainer's execution, One Arrow admits to having the benefit of independent legal advice before exercising it. One Arrow had the wherewithal to decline the litigation financing and insurance, and signed the Western Boundary Retainer.

[368] It is acknowledged that One Arrow executed the Western Boundary Retainer with the understanding that it did not have the financial resources to litigate the claim. Maurice was of the view that One Arrow did not possess the financial resources to pursue the claim and shared their opinion. One Arrow was not successful in obtaining the full amount of federal funding, which makes me question how much funding was available to One Arrow to pursue the Western Boundary Claim.

[369] Maurice's arguments in respect of the *Ralston/Harrington* factors notes in the Annuities Retainer section equally apply here. Although I disagree with some of

Maurice's characterizations, the circumstances of the Western Boundary Retainer differ from the Annuities Retainer. While the timing was sub-optimal and may not have required a contingency fee arrangement, direct discussions about the Western Boundary Retainer between Maurice and One Arrow occurred.

[370] Considering what the parties knew at the time the Western Boundary Retainer was executed, the uncertainty of funding, and the fact that One Arrow had independent legal advice before signing, I find the Western Boundary Retainer to be fair and reasonable under the circumstances.

[371] The fees demanded in respect of the termination provisions are unenforceable. I will address any additional compensation owed to Maurice in the next section.

## 6. *Quantum Meruit*

[372] Given my findings in respect of the Annuities retainer, a *quantum meruit* assessment of the legal fees is appropriate (*Zipchen* at para 90).

### (a) *Salaries Claim*

[373] Maurice states that One Arrow terminated the Annuities Retainer on March 4, 2020, triggering the termination provisions of the Annuities Retainer. Maurice invoiced One Arrow for the adjusted legal fees, outstanding disbursements, and a 12% estimated contingency fee . Maurice asserts its entitlement to interest on outstanding accounts as well. I have previously determined that termination provisions are unenforceable.

[374] Maurice argued that it committed substantial time and resources to One Arrow. Its work began on the Salaries Claim in 2014 and ended in 2019. The Western Boundary Claim research began in 2004, and more substantive work started in 2011

and continued through 2020. Maurice committed several hundred hours of work over many years, representing a substantial contribution by Maurice to advance One Arrow's claims.

[375] Maurice says the matters were remarkably complex. Maurice committed one year's worth of research, noting that the historical context of the claims dates back to the late 1800s. The claims pertained to specific matters affecting One Arrow band members, Chiefs, and Headmen. The outcomes were important to One Arrow and other First Nations to ascertain their degree of entitlement to compensation and reassure them of their ability to seek compensation for wrongdoings.

[376] Maurice asserts that they assumed tremendous responsibility by taking on these matters and committed to carrying the files for years. Maurice exhibited a high degree of skill and competence.

[377] One Arrow argued that Maurice is a specialty law firm that provides specialized experience in Aboriginal claims. One Arrow acknowledges that Maurice provided competent legal services; its hourly rates are consistent with market rates. However, it argued that the hours recorded by Maurice are excessive. I agree.

[378] On the Salaries Claim, Maurice submitted two briefing notes totalling twenty-five pages of work product split ten ways and attended to some subsequent case administration. Maurice did not settle the claim or administer the settlement process. One Arrow argued that the time entries provide little assistance as they are largely duplicative across numerous files. In one instance, an associate with Maurice billed 25 hours in one single day, across multiple files, for the same task.

[379] Maurice argued for the higher fees in the Salaries Claim due to the work done and results obtained, establishing the precedent in the Beardy's Annuities Claim. In my view, the Beardy's Annuities Claim is irrelevant to the One Arrow Salaries

Claim. Maurice was compensated for the Beardy's Annuities Claim and cannot claim that again from One Arrow.

[380] One Arrow received settlements of \$2,250,651 on the Annuities Claim and \$2,209,261 on the Salaries Claim. Maurice has been compensated in the Annuities Claim.

[381] One Arrow suggests that Maurice's *quantum meruit* entitlement is \$10,000 on the Salaries Claim. When that number is multiplied by the Rebellion Nations who had claims, the total is \$140,000, which is appropriate or even generous compensation for 25 pages of work product on an already established issue, plus some case administration.

[382] Maurice argued that their work on the Salaries Claim consisted of more than two briefing notes and attending to some case administration. In addition to preparing the briefing notes, Maurice says they prepared spreadsheets, conducted research to advance the Salaries Claim, met to discuss next steps on the Salaries Claim, and reviewed calculations of the damages.

[383] Maurice argued that each briefing note required substantial research and revisions to ensure they were sufficient for submission to the Specific Claims Branch and the Department of Justice. A considerable amount of work was done to advance the Salaries Claim.

[384] Maurice is seeking payment of \$44,981.15, plus interest for the Salaries Claim on a *quantum meruit* assessment.

[385] I have not considered the amount suggested by One Arrow in relation to other clients. One Arrow has indicated that it ought to pay Maurice \$10,000 based on the suggestion that Maurice would then be paid \$140,000 across the Rebellion Nations. I am not aware of the other Rebellion Nations' arrangements with Maurice, nor is it

appropriate to consider what they may have paid to Maurice. The arrangements are between those Nations and Maurice.

[386] In my view, the compensation owed to Maurice is somewhere in the middle of the two numbers provided. I acknowledge that the time records are flawed and unreliable because the time was not always split between the clients involved. However, Maurice's number is inflated due to their reliance on the work done and precedent established in the Beardy's Annuities Claim. Maurice has been fully compensated for that work and cannot claim it again here. I also acknowledge the associate who billed 25 hours in one day to the file.

[387] Acknowledging that the exercise of assessing fees is an imprecise calculation, on the Salaries Claim, Maurice is entitled to \$25,000 plus interest of 1.5% monthly, compounded annually, from the date of the last invoice issued to One Arrow.

*(b) Western Boundary Claim*

[388] One Arrow states that the fees billed on the Western Boundary Claim are excessive and inflated. Since taking on the Western Boundary Claim in 2014, Maurice has billed \$158,079.24, with \$151,844.16 of that amount being for legal fees.

[389] The first invoice issued on the Western Boundary Claim is dated September 19, 2014, for \$19,322.52, and One Arrow paid shortly thereafter. One Arrow states that this invoice was for the work revising the Western Boundary Claim submission and for exploring litigation insurance funding.

[390] Maurice sent One Arrow another invoice on October 9, 2016, for \$3,260.25. The fees therein relate to litigation insurance funding and predate the September 19, 2014, invoice. The remaining charges relate to a partner at Maurice learning the file and regular status reviews while Canada was reviewing the claim submission. One Arrow did not pay the October 9, 2016, invoice.

[391] One Arrow argued that there was minimal progress on the Western Boundary Claim, yet Maurice billed \$138,756.72 to file a declaration of claim that was based on a pre-prepared submission.

[392] Maurice states that, after they filed the declaration of claim, Canada drafted a common book of documents and an oral history protocol that Maurice reviewed. Maurice prepared a statement of issues, which is a list of four or five questions to be answered in litigation. Maurice also reached out to a potential expert and began entering documents into a document management system. Then Maurice was terminated. Maurice takes issue with One Arrow's characterization that minimal work was done on the Western Boundary Claim.

[393] One Arrow states that during the three-year waiting period, minimal legal fees were incurred on the Western Boundary Claim. While the claim was rejected in September 2017, the matter did not proceed to the pleadings stage until May 2019. By that point, Canada approved \$53,100 in federal funding, all of which was paid to Maurice by January 2020.

[394] One Arrow argued that Maurice spent an inordinate and inexplicable amount of time on the claim submission, given that the work had been substantially completed previously. There was no sense of urgency, as Maurice took 20 months to prepare and file the claim. Several different lawyers billed time to the file; however, the costs associated with lawyer turnover at Maurice are not properly attributable to the client. Further, the unreasonable time billed to the file negated any discount on the fees.

[395] Maurice argued that the \$138,756.72 in legal fees works out to a reasonable \$23,126.12 per year. However, One Arrow states that this is a flawed argument because the prior invoice paid in 2014 should be added, making the total \$158,079.24. Additionally, for five of the six years, the file was dormant. During that time, little to no legal fees accrued. However, in the 10 months of active litigation

between May 2019 and March 2020, the costs skyrocketed.

[396] Maurice submitted a budget and work plan to Canada for funding in the Western Boundary Claim, seeking \$128,956 to cover legal fees related to the anticipated response from Canada and proceeding to document discovery, oral history, and expert evidence stages. The legal fees anticipated on the oral history stage were \$47,020, and legal fees for the expert report were \$33,012. According to Mr. Smart, neither of these stages had occurred, and document production had just begun when Maurice was terminated. Essentially, they say Maurice was inexplicably over its litigation budget.

[397] Finally, fees were billed for litigation insurance financing, despite One Arrow having declined the products earlier. Maurice stated on cross-examination that Maurice bills these fees across all its files, whether the client requests the funding or not (Transcript of cross-examination of Mr. Maurice, T13 Lines 4-20).

[398] Maurice argued that the fees charged on the Western Boundary Claim should not be reduced and that the fees charged are appropriate. They say the declaration of claim was complicated and, given that the original Western Boundary Claim submission was drafted in 2004, required additional work and analysis. The statement of issues was complex because it can be difficult for Canada and the First Nations to agree on the issues. Maurice uses a document management system called Eclipse, which requires users to code the documents like an affidavit of documents. Maurice states that a fair bit of work is involved in coding documents in Eclipse.

[399] Maurice expects a large settlement to come on the Western Boundary Claim as well.

[400] Maurice argued that the allegations of duplicate entries between the Annuities Claim and the Western Boundary Claim are unsupported. Maurice contended

that Mr. Smart acknowledged that entries may not have been duplicative but instead split among the files. On review of Mr. Smart's cross-examination transcripts, I note that he agreed with Maurice that it was "possible" that one time entry was split between two files, but he was sceptical that this was the case (Joint Book of Documents, Tab 10, 68, Lines 1-21).

[401] Maurice says it is entitled to \$138,756.72 plus a 6% contingency fee on the settlement of the Western Boundary Claim. Maurice seeks interest on all outstanding accounts.

[402] I do not accept that Mr. Smart acknowledged the duplicate entries were fees that were split among other clients. He acknowledged that it could be the case, but was sceptical. I do not see that as an acknowledgement, as suggested by Maurice. Further, the evidence supports that there were duplicate time entries, and they ought to be deducted from what is owed to Maurice.

[403] It is difficult to calculate the appropriate fees to any degree of certainty given the duplicate entries and other time entry errors. As such, and on review of the work completed, Maurice is entitled to \$65,000 for services rendered on the Western Boundary Claim, plus a 6% contingency fee, having found that the Western Boundary Retainer is fair and reasonable.

## **VI. COSTS**

[404] The Applicants seek solicitor-client costs. Beardy's seeks a fixed sum of \$300,000, whereas One Arrow relies on Beardy's submissions but does not give a specific amount for costs.

[405] Rule 11-24 of *The King's Bench Rules* displaces the ordinary cost principles and allows for an order for solicitor-client costs. The Saskatchewan Court of Appeal speaks about the law on solicitor-client costs in *Phillips Legal Professional*

*Corporation v Cowessess First Nation No. 73*, 2020 SKCA 16 at para 115:

[115] I turn now to consider costs of the appeal. Phillips has been wholly unsuccessful in its appeal. Cowessess has requested solicitor-client costs. The governing case on solicitor-client costs is *Hope* [*Hope v Gourlay*, 2015 SKCA 27] and the principles set out therein:

[47] The exceptional nature of solicitor-client costs is well known. The framework principles which govern their award were outlined by this Court in *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246. There, Jackson J.A. writing for the Court at para. 118, summarized those principles as follows:

...

1. solicitor and client costs are awarded in rare and exceptional cases only;
2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.

[48] As explained in the companion appeal of *Hope v Pylypow*, 2015 SKCA 26 at para 48, solicitor-client costs should never be awarded without an explanation as to why they are being awarded and an identification of the conduct which is said to warrant them. No such explanation was provided here.

[406] Maurice argued that the Applicants are not entitled to any costs at all. Citing the Saskatchewan Court of Appeal in *6517633 Canada Ltd. v Gibson Creek Farms Ltd.*, 2023 SKCA 19 at para 46, quoting *Siemens v Bawolin* 2002 SKCA 84,

[2002] 11 WWR 246, Maurice relies on the Court's narrow circumstances where solicitor-client costs may be ordered:

[46] While courts have a general discretionary jurisdiction to award costs, solicitor and client costs are reserved for exceptional circumstances: *Strand v Gilewich*, 2007 SKCA 34 at para 14, 293 Sask R 48. Appellate courts are "concerned to ensure that solicitor-client costs are awarded rarely" (*Phillips Legal Professional Corporation v Vo*, 2017 SKCA 58 at para 150, [2017] 12 WWR 779). Solicitor and client costs are justified only in "a relatively narrow set of circumstances" (*Lynch v Hashemian*, 2006 SKCA 126 at para 31, [2007] 2 WWR 52). These were summarized by Jackson J.A. in *Siemens v Bawolin*, 2002 SKCA 84 at para 118, [2002] 11 WWR 246 [*Siemens*]:

1. solicitor and client costs are awarded in rare and exceptional cases only;
2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional

[407] As Popescul C.J. notes regarding the purpose of costs, *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers v Saskatchewan Labour Relations Board*, 2013 SKQB 209, 422 Sask R 12:

[11] Fourthly, the purpose of awarding costs includes:

- the traditional objective of partially indemnifying the successful party;
- the efficient and orderly administration of justice;
- to encourage settlements, to defer frivolous actions

and defences;

- to discourage unnecessary steps in litigation; and
- to sanction unreasonable or vexatious behaviour.

[408] The scope of discretion and what the Court may consider in awarding costs is stated in Rule 11-1 and extends to making any direction or order that the Court “considers appropriate”.

[409] The Court acknowledges its discretion in awarding costs. The Applicants argued that this is a rare and exceptional circumstance where solicitor-client costs are warranted. They say that the litigation here has been complex and protracted, despite being intended as a summary proceeding. The Applicants attribute the complexity and delay to Maurice.

[410] The Applicants urged the Court to consider the likelihood that Maurice spoke to the expert witness and encouraged them not to cooperate with Beardy’s and One Arrow after they terminated Maurice. This cost the Applicants additional funds to obtain new experts and start anew. The Applicants argued that this behaviour ought to be discouraged, and timely resolution of claims should be encouraged.

[411] A review of both files reveals that the Applications did not proceed in a summary fashion at all. The Applicants argue that Maurice took a cavalier approach to this litigation, and it was Maurice’s convoluted and haphazard billing practices that complicated matters. The Applicants argued that file disclosure and document production became a significant issue and were never fully resolved. They say that Maurice provided further disclosure in affidavit evidence only after Beardy’s made applications to the Court to compel the documents. Invoices to Beardy’s were disclosed at odd times, one appended to Mr. Maurice’s affidavit sworn November 30, 2022, and another in answers to undertakings. In both cases, this was the first time Beardy’s received the invoices.

[412] The Applicants argued that Maurice caused the litigation to be unduly expensive by failing to produce documents, agreeing to produce documents then reneging, and causing the Applicants to apply to the Court for document production.

[413] The Applicants say they were forced to spend an inordinate amount of time to bring this matter to the ultimate hearing. Citing the document disclosure issues, and even when faced with its documents showing an error, Maurice refused or neglected to rectify the mistake. The example given is the erroneous Poundmaker reimbursement of funds.

[414] Maurice takes issue with Beardy's characterization that it purposely failed to disclose documents throughout the litigation. Maurice states that they disclosed all documents they deemed necessary to be disclosed and could locate. Maurice further states that, despite agreeing to provide certain documents in a consent order granted on August 11, 2021, the consent order included language Maurice could not comply with for fear of breaching its ethical obligations to other clients. In that case, Maurice says they made best efforts to comply, and continued to make best efforts to comply, with the required document disclosure.

[415] Maurice states that there is no evidence that it contacted any experts following the termination of their retainer agreements. Further, the \$300,000 requested by Beardy's is not grounded in any evidence or reasoning as to the amount requested.

[416] Maurice held the Beardy's trust funds as a fiduciary. The *LSS Code* mandates that lawyers handle trust funds and client property with care (s. 3.5-1). Maurice paid funds from trust that it should not have (Beardy's Annuities Claim). Maurice accidentally retained funds in trust when they should not have (Beardy's Flood Claim). Maurice charged Beardy's for the Additional Invoices and initially held firm that the Additional Invoices were for work completed for Beardy's alone. Later, Maurice admitted the Additional Invoices were for work completed for the group.

Maurice collected fees on termination when they should not have. The termination provisions of the retainer agreements are unenforceable.

[417] Lawyers are officers of the Court, and it is both a legal and an ethical requirement that their fees be fair and reasonable. In determining that Maurice's fees invoiced to Beardy's are neither fair nor reasonable, it follows that the Applicants are entitled to costs.

[418] Further, I accept the Applicants' comments that this litigation has been unduly complex, and, on the issue of file or document production, Maurice was not forthcoming in the first instance. While I cannot assume that Maurice spoke with the expert witness, the timing of the expert's refusal to cooperate with the Applicants is concerning. This conduct by legal counsel, if it occurred, is not to be condoned.

#### **Beardy's & Okemasis Cree Nation**

[419] While I agree with the Applicants that this process is designed to be a summary procedure and that it became quite complicated and drawn out, it still does not rise to the level where an award of solicitor-client costs ought to be awarded.

[420] Acknowledging the above commentary, the considerations of Rule 11-1(4) of *The King's Bench Rules* and noting Beardy's success, enhanced costs ought to be awarded to Beardy's. The Saskatchewan Court of Appeal considered when enhanced costs may be appropriate in *Tofin v Galbraith*, 2019 SKCA 35 at paras 67-78, [2019] 9 WWR 1 [*Tofin*]. The circumstances in the Beardy's matter fall within those contemplated in *Tofin*.

[421] Under the circumstances, Beardy's shall have enhanced costs of \$100,000.

### **One Arrow First Nation**

[422] One Arrow was successful, in part. It was determined that the termination provisions of the retainer agreements are unenforceable, and the Court accepted One Arrow's argument that the Salaries Claim was not included in the Annuities Retainer. However, the Court upheld the Western Boundary Retainer, in part.

[423] The scales are tipped in One Arrow's favour in their success, but also in the fact that they were required to bring the application to Court to deal with time entry errors and the like.

[424] In the end, after consideration of Rule 11-1 of *The King's Bench Rules* and the circumstances of its application, One Arrow is entitled to its costs on Column III.

## **VII. ORDERS**

### **One Arrow First Nation v Maurice**

[425] The following order shall issue in QBR-RG-00885-2020, One Arrow First Nation v Maurice Law:

- (1) The terms of the Annuities Retainer do not apply to the Salaries Claim;
- (2) The respondent is entitled to payment of \$25,000 from the applicant, plus interest of 1.5% monthly, compounded annually, from the date of the last invoice issued to One Arrow for services rendered on the Salaries Claim;
- (3) The Western Boundary Retainer is fair and reasonable, save and except for the termination provisions which are unenforceable;

- (4) The respondent is entitled to payment of \$65,000, plus interest from the applicant, plus a 6% contingency fee, on the terms of the Western Boundary Retainer; and
- (5) The applicant is entitled to its costs of the application on Column III, payable by the respondent.

**Beardy's & Okemasis Cree Nation v Maurice**

[426] The following order shall issue in QBG-RG-00748-2021, Beardy's & Okemasis Cree Nation v Ron S. Maurice and Maurice Law:

- (1) The terms of the Annuities Retainer do not apply to the Salaries Claim;
- (2) The Annuities Retainer is unreasonable;
- (3) The Flood/Ag Retainer is unfair and unreasonable;
- (4) The respondents shall reimburse the applicant \$826,797.84, minus the interest owed on the applicant's share of the Salaries invoice of \$35,901.26. The interest shall be calculated at 1.5% monthly, compounded annually, from the date of the last Salaries Claim invoice issued to the applicant by the respondents; and
- (5) The applicant is entitled to enhanced costs in the amount of \$100,000 payable by the respondents.

\_\_\_\_\_  
J.  
C.L. NORBECK