IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Arnaldi v. Liggett,*
2026 BCSC 776

Date: 20260430
Docket: S256940
Registry: New Westminster

Between:

Michael Paolo Arnaldi

Client

And

Andrew Liggett and Sea to Sky Law Corporation

Solicitor

Before: Registrar Gaily

Reasons for Decision

Counsel for the Client:	D.R. Greig
Counsel for the Solicitor:	A. Liggett
Place and Dates of Hearing:	New Westminster, B.C. July 7 and 8, 2025 and February 4 and 5, 2026
Further written submissions:	March 10, 2026
Place and Date of Judgment:	New Westminster, B.C. April 30,2026

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Introduction

[1] In an appointment filed on February 27, 2025, Michael Paolo Arnaldi (the "Client") initiated this proceeding under the *Legal Profession Act*, S.B.C. 1998, c. 9 [*LPA*], to review the bills of his former lawyer, Andrew Liggett, a sole practitioner who carries on business as The Sea to Sky Law Corporation (the "Law Firm"). Sixteen bills dated from August 23, 2023, through January 6, 2025 (the "Bills"), were attached to the appointment. The Client retained Mr. Liggett, who has been practising for over 30 years, to assist him with an acrimonious estate matter, which settled 14 months later, after an attempted mediation. The Client has paid the Law Firm approximately $35,000 towards fees owing. The value of the estate was approximately $1.4 million. The Law Firm maintains that the Client owes it approximately $390,000 in outstanding legal fees and disbursements, together with interest, which has accrued on the unpaid portion of the invoices.

[2] When he retained the Law Firm, the Client's grandmother (the "Deceased") had recently passed away in hospital. The Deceased had four beneficiaries, a daughter (the Client's mother), a son, and two grandchildren (the Client and his sister). The Client's mother (the Deceased's eldest child), refused to release her body from the morgue without an autopsy, which the Client felt was contrary to the Deceased's wish for a speedy burial and he sought legal help. The Client advised Mr. Liggett that the Deceased had left a will she made in 2022 (the "2022 Will"), and although she did not appoint an executor under the 2022 Will, the Client told Mr. Liggett that it was known that the Deceased wanted him to administer her estate. The Deceased had not registered the 2022 Will, but she had registered a previous will made in 1987 (the "1987 Will"). Under the 1987 Will, the estate was divided 80% to the Deceased's children (40% each) and 20% to her grandchildren (10% each). Under the 2022 Will, the Deceased gave each of her children $1,000 and left the residue of the estate to be divided equally between her two grandchildren. When he was retained, Mr. Liggett knew that the Client's relationship with his family was acrimonious, and that the other beneficiaries were upset about the 2022 Will.

[3] The Client's mother and uncle filed Form P29[1] notices of dispute regarding the 2022 Will after Mr. Liggett initially sought their consent to the Client's appointment as administrator of the estate under the 2022 Will. In late September 2023, the Law Firm filed for probate with an accompanying application to appoint the Client the administrator of the Deceased's estate (the "Probate File"). The Law Firm also filed a petition to appoint the Client the administrator of the estate under the 2022 Will (the "Petition"). The Client's mother and uncle each retained counsel and opposed the proceedings, filing related applications. The Client's sister represented herself throughout the proceedings. She did not file a notice of dispute, but she too opposed the Client's proceedings. The Law Firm prepared and filed pleadings (including a court-ordered amended petition), and several supporting affidavits. Mr. Liggett appeared in chambers on five separate occasions; however, at each appearance, the court ordered the proceedings adjourned to further dates for various reasons and did not consider the merits of the Client's case. No costs were awarded at any appearance.

[4] In March 2024, the Client's uncle applied to have the Petition converted to an action and commenced an action against the Client and the other beneficiaries regarding the 2022 Will and the Deceased's estate (the "Action"). The Law Firm filed the Client's response to the Action and served a notice to admit. It also filed an application to dismiss the Action, which did not proceed to a hearing. In early September 2024, Mr. Liggett represented the Client at a two-day mediation, which did not reach an agreement. By the time of the mediation, the Law Firm claimed the Client owed approximately $250,000 in legal fees. A few days after the mediation, the parties settled, agreeing to appoint a third-party administrator, divide the Deceased's estate relatively equally among the four beneficiaries, and to bear their own legal costs (among other things). As a result of the settlement, the court matters did not proceed further.

[1] Rule 25 of the *Supreme Court Civil Rules* [*SCCR*] governs estate proceedings, and the forms in Appendix A.1 to the *SCCR*, which are numbered P1 through P46, are the relevant forms for estate proceedings to which I refer in this decision.

[5] The Law Firm submits its fees were reasonable in the circumstances of this contested estate matter. In the written closing submissions, the Law Firm submits that the Client is suffering from "settlement remorse" and that "the Client was not surprised by any of the Solicitor's billing with no prior evidence of the work being done for him" submitting that the Law Firm sent the Client "hundreds of emails keeping him informed on an almost daily basis about the process of his case." Mr. Liggett also submits that because he is a sole practitioner, "unpaid accounts by clients is a significant loss to the Solicitor who must still pay his overhead including staff wages." The Client submits that the Law Firm's Bills should be substantially reduced, especially when considering the factors of the time spent and the results obtained, which the Client asserts were to his detriment. The Client submits that the amount sought by the Law Firm should be reduced to $70,000, inclusive of the amount the Client has already paid.

[6] As detailed below, considering the circumstances of this case and the factors set out under s. 71(4) of the *LPA*, I find that the fees claimed by the Law Firm are indefensible and should be substantially reduced. The evidence before me satisfies me that the amount of time the Law Firm billed the Client is unreasonable and excessive and is not reflected in the resulting work. The Law Society of British Columbia ("LSBC") has disciplined Mr. Liggett for his accounting practices (among other things) and he is not permitted to operate a trust account without supervision, a factor I find relevant on this review of the Law Firm's Bills. Considering the results obtained by Mr. Liggett for the Client, I find that the work performed was largely of little to no value. I find it is appropriate to reduce the amount claimed by the Law Firm to $60,000, which amount is inclusive of all disbursements, taxes and applicable interest, as well as the amount the Client has already paid the Law Firm. Based on the evidence before me, in the circumstances of this case, I find $60,000 to be a fair fee commensurate with the work performed.

[7] As I have reduced the Law Firm's fees by more than 1/6th, under s. 72 of the *LPA*, the Client is entitled to his costs of the *LPA* proceedings, which are normally based on the tariff set out in Appendix B of the *Supreme Court Civil Rules* [*SCCR*]

governing party-and-party costs (typically, items 1, 2, 24 and 25). The parties did not make submissions on costs and if they are unable to agree on the Client's costs of the *LPA* review or if there are matters of which I was not informed (such as settlement offers), I direct them to advise Scheduling forthwith, so that I may schedule deadlines for written submissions on costs.

The *LPA* Review Proceedings

[8] The Client was represented by David Grieg throughout the *LPA* review proceedings. He filed the appointment and scheduled a pre-hearing conference ("PHC") for May 15, 2025, and the substantive hearing for two days in New Westminster, July 7 and 8, 2025. I heard the PHC and made a series of orders.

[9] The Client filed a hearing record containing the appointment with 16 attached Bills and an amended index of the Bills (the index is Exhibit #1). In compliance with the PHC orders, the Client's hearing record contained a copy of the Client's particularized objections to the Bills, Mr. Liggett's affidavit of justification filed June 16, 2025 (the "Liggett Affidavit") and the first affidavit of Margaret Hesse, the Law Firm's office administrator, also filed June 16, 2025 ("Hesse Affidavit #1"). The Client's hearing record also contained the affidavit of Elaine Ekman, a paralegal working with Mr. Grieg, filed on June 18, 2025 (the "Ekman Affidavit").

[10] At the first day of the hearing, Mr. Liggett provided his own four-volume hearing record, which were separately marked as exhibits. Volume 1 contained the parties' pleadings and affidavits and orders in the Probate File (Exhibit #2), and Volume 2 contained the parties' pleadings and affidavits and orders in the Petition File (Exhibit #3). Volume 3 contained the parties' pleadings in the Action, as well as the parties' materials for the mediation (Exhibit # 7). Volume 4 contained a copy of the retainer agreement, as well as copies of invoices for disbursements and emails sent to the Client (which were not exhibited to an affidavit), copies of the Bills, a spreadsheet showing the Law Firm's interest calculations, the Liggett Affidavit, Hesse Affidavit #1, the Ekman Affidavit, and the second affidavit of Mx. Hesse, filed

on June 30, 2025 (“Hesse Affidavit #2”) (Exhibit #8). The parties also tendered documents during the hearing, which I refer to where relevant.

[11] It was apparent that the hearing could not conclude in two days (among other things, despite the PHC order requiring the parties to confirm their witnesses by June 27, Mr. Liggett had failed to notify Mr. Greig prior to the first day that he would be calling Mx. Hesse to testify). On July 7 and 8, Mr. Liggett spoke to his affidavit and was cross-examined by Mr. Greig. I ordered the hearing to be continued for a further day on December 1. The evening of November 30, a Sunday, Mr. Liggett emailed Scheduling and Mr. Greig advising that he was unable to attend the next day due to illness. When Mr. Greig attended to speak to the adjournment, I ordered the hearing to be continued for a further two days.

[12] When the parties appeared on February 4, 2026, Mr. Liggett provided some redirect of his evidence and called Mx. Hesse, who gave their evidence and was cross-examined by Mr. Greig. Mr. Greig called the Client, who gave *viva voce* evidence and Mr. Liggett began his cross-examination of the Client but did not finish. On February 5, Mr. Liggett was an hour late arriving at court (attributing the delay to traffic), and I agreed to take a short lunch hour so that the hearing could conclude. Mr. Liggett concluded his cross-examination of the Client after the lunch break and Mr. Greig called the Client’s spouse, Brianna Arnaldi (nee Morse), who also gave *viva voce* evidence and was cross-examined by Mr. Liggett. Despite the late start, the evidence was concluded by the afternoon break. Mr. Greig was prepared to make closing submissions, providing written submissions and a book of authorities. However, Mr. Liggett had not prepared closing submissions, advising that he thought the hearing would not conclude that day.

[13] I ordered Mr. Liggett to file his written closing submissions, responding to the Client’s submissions, no later than March 6. If necessary, I ordered that Mr. Greig could file submissions in reply by March 13. The Client’s submissions are 24 pages long (113 paragraphs) and he provided five authorities. The Client’s reply submissions indicate that Mr. Liggett provided his written submissions to Mr. Greig

on March 7, but Scheduling received a filed copy of Mr. Liggett's submissions on March 10, the same day as Mr. Greig filed the Client's reply submissions. Mr. Liggett's submissions are seven pages (20 paragraphs) and although he cited at least three authorities that are not in Mr. Greig's book of authorities, Mr. Liggett did not provide a book of authorities or links to the authorities in his submissions.

Background to the Client's Retainer of the Law Firm

[14] On August 2, 2023, the Deceased, Loretta Schellert, died in hospital. She had two children, Alexander Schellert and Carmen Arnaldi (the Client's mother). The Client and his sister, Stephanie Arnaldi, are the Deceased's only grandchildren. When discussing the estate proceedings, because they share the same surname and to avoid confusion with the Client's spouse, I will refer to the Client's mother and sister by their first names intending no disrespect.

[15] The Client testified that the Deceased's relationship with Carmen and Mr. Schellert had deteriorated over the years and she was estranged from them in the years before her death. The Client said that he had a good relationship with the Deceased, visiting her regularly with Ms. Arnaldi. There is no dispute that the Client's relationship with his mother and uncle was acrimonious, and he testified that in his view, his sister Stephanie "sided with Carmen" on issues.

[16] The Client testified that the Deceased had provided him with an envelope containing her last will (the 2022 Will), which he opened at the hospital. On the first page of the 2022 Will and under the Deceased's signature, the document is dated October 24, 2022, but it was signed and dated by the witnesses on December 14, 2022.[2] Because of the discrepancy between the date that the Deceased signed it and the date when the witnesses signed it, the 2022 Will may not comply with the requirements of the *Wills, Estates and Succession Act*, SBC 2009, c. 13[3] [*WESA*].

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[2] Liggett Affidavit, Ex. A.

[3] *WESA*, s. 37(1): To be valid, a will must be (a) in writing, (b) signed at its end by the will-maker, or the signature at the end must be acknowledged by the will-maker as the will-maker's signature, in the presence of 2 or more witnesses present at the same time, and (c) signed by 2 or more of the witnesses in the presence of the will-maker.

[17] The value of the Deceased's estate at the time of her death was approximately $1.4 million, consisting primarily of her home in Delta. This is set out in the Client's Form P10 affidavit of assets and liabilities for domiciled estate grant, filed January 30, 2024[4], and in the mediation agreement dated September 9, 2024.[5] The Client's evidence was that the Deceased had given her children money while she was alive to help with the purchases of properties (he said several hundred thousand dollars each) and she did not want them to inherit anything else. Mr. Liggett acknowledged that the Client had told him early in the retainer that the Deceased's children were the named beneficiaries on her investment accounts, which would pass to them outside her estate.

[18] The Client and Ms. Arnaldi testified that the Deceased had made it clear that she wanted the Client to administer her estate and that her friends and sisters knew this was her wish. Because there was no executor or administrator under the 2022 Will, as required by law[6], the funeral home needed Carmen's consent to release the Deceased's body from the morgue. The Client testified that Carmen and Stephanie wanted an autopsy performed for genetic-illness testing. The Client testified that he was concerned that the Deceased's wishes were not being met and he did not want her body remaining in the morgue for an extended period.

[19] The Client testified that he found Mr. Liggett through internet searches and emailed to see if Mr. Liggett could help him get the Deceased's body released from the morgue, based on information on the Law Firm's website that Mr. Liggett had over 30 years' experience in family and estate matters.[7]

[20] The Client testified that he is employed as a slot attendant at a casino in the Fraser Valley, earning approximately $50,000 annually, and that he had been working in this capacity for a few years when he retained the Law Firm. Ms. Arnaldi

[4] Ex. #3, Tab 16.
[5] Ex. #7, Tab 4 of the Mediation documents.
[6] *Cremation, Interment and Funeral Services Act*, SBC 2004, c. 35, s. 5.
[7] Ex. #11.

testified that she works for a charity-run second-hand store, earning a similar amount to the Client, and that she has some bookkeeping experience.

Summary of the Retainer Agreement

[21] The parties agree that the Client and Mr. Liggett spoke on the telephone for a little over an hour on August 7, before they entered into the retainer agreement dated August 8, 2023, which the Client signed remotely (the "Retainer Agreement"[8]). Mr. Liggett has charged the Client one hour of his time for their initial conversation, maintaining that the Client was only entitled to fifteen minutes of free advice.

[22] The Retainer Agreement provides that Mr. Liggett's hourly rate was $395, and that the hourly rate for legal staff was $125. The Retainer Agreement sets out rates for articled students and associate lawyers, but Mr. Liggett was the only lawyer who performed work on the Client's file. The Client does not take issue with the hourly rates. The Retainer Agreement states the following:

> there are also many services, such as gathering information and preparing routine documents, that legal staff are well qualified to perform and at a lower cost. … YOU AGREE to pay the time of all lawyers and staff of our firm Sea to Sky Law who work on your matter" (emphasis original).

[23] The Client provided the Law Firm with a retainer of $4,900, as set out in the Retainer Agreement.

[24] Under the heading "interest on overdue accounts", the Retainer Agreement provides that the Law Firm charged interest of 3% per month, compounded monthly, for an effective annual rate of 42.586% per year on the balance of any bills not paid in full immediately and that "interest charged on overdue amounts are calculated and compounded monthly from the bill by date" and that the Client agreed to "pay this interest before any reduction in the principal debt you may owe." Mr. Liggett testified that the reason he charged high interest rates was because he did not want to be a

[8] Hesse Affidavit #1, Ex. A.

lender to his clients and in the emails in evidence before me, he suggested to the Client and Ms. Arnaldi that they obtain third-party financing for their litigation.

[25] Mr. Liggett acknowledged that as of January 1, 2025, the criminal rate of interest (which is specified in s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46) was reduced to an annual percentage rate of 35%, and that the interest rate set out in the Retainer Agreement now exceeds the criminal rate. Mr. Liggett's evidence was that in calculating the interest owing on the Client's outstanding account, he had taken into account the change to the criminal rate and has reduced the rate he was charging the Client on the outstanding fees.

Overview of the Work Performed

A Note about the Bills

[26] The Law Firm uses a software program called "Clio" to generate its bills. Both Mr. Liggett and Mx. Hesse attributed some of the Law Firm's billing practices to the Clio software. For example, the narratives on the Bills frequently start with the phrase, "Review Documents", although the tasks listed do not necessarily involve document review. Mr. Liggett testified that the Clio program requires narratives to be categorized and one of the categories is "Review Documents" and he viewed it as a good "catch all" description. The majority of Mr. Liggett's entries start with the phrase "Review Documents".

[27] Mr. Liggett and Mx. Hesse testified that if a client has not paid a bill in full within 30 days, Clio will automatically calculate and add interest to the outstanding amount and send reminder emails to the client, but if a bill is marked draft, Clio will not add the interest. This was also in evidence in an email from Mr. Liggett to the Client at p. 300 of Tab 8 of Ex. #8. The Client and Ms. Arnaldi testified that almost all the Bills they received from the Law Firm were marked "draft". The Client testified that he understood from Mr. Liggett and/or Mx. Hesse that if he was making monthly payments towards the fees owing, the Law Firm would not charge interest on the balance owing, which is why the Bills were marked draft. Mx. Hesse and Mr. Liggett testified that they only agreed with the Client that interest would not accrue on the

first Bill. Mr. Liggett denied that he had agreed the Client's account would not attract interest while he was making installment payments. On some of the Bills under review, under the heading "interest on other invoices", the Law Firm charged the Client interest on overdue amounts. However, in an email exchange related to the second Bill, discussed below, Mr. Liggett agreed that if the Client was making installment payments, it would avoid compound interest accruing (Exhibit #9).

[28] Mr. Liggett testified that the entries on the Bills that are not attributed to anyone are his (the others start with the letters "LS" followed by the initials of one of the legal assistants and he confirmed that the entries identified as "LS-GS" or "LS-HM" are entries by his legal staff, Garima Singh and Hawsar Mouhammed). Mx. Hesse testified that entries that were not attributed to initials of a legal assistant, but the hourly rate was $125, were likely Mx. Hesse's entries.

[29] Unfortunately, the Bills were not issued monthly or when a major step in the estate proceedings was achieved, so I have noted the total number of hours recorded by Mr. Liggett and his staff on each Bill for the billing period, as well as the total amount claimed (legal fees, disbursements and applicable taxes) on each Bill, in the table below.

Bill #	**Date Issued**	**Billing Period**	**Hours Recorded**	**Total claimed**
#2100	August 23, 2023	August 7 – August 23, 2023	Mr. Liggett: 25.8 hours; Law Firm Staff: 14 hours	$13,422.98
#2227	November 22, 2023	August 23 – November 21, 2023	Mr. Liggett: 168.5 hours; Law Firm Staff: 34.2 hours	$81,700.09
#2323	January 23, 2024	October 4 and November 22, 2023	Mr. Liggett: 5.70 hours; Law Firm Staff: 2 hours but $0 charged	$2,521.69

#2325	January 25, 2024	October 4 – January 23, 2024	Mr. Liggett: 103.3 hours; Law Firm Staff: 3.3 hours	$46,440.58
#2394	February 13, 2024	January 25 – 30, 2024	Mr. Liggett: 2 hours; Law Firm Staff: 1.30 hours	$1,700
#2393	March 13, 2024	December 22, 2023, January 22, and April 13, 2024	Interest charges on invoice #2227 and "on overdue invoice #2393"	$5,826.26
#2453	April 17, 2024	March 25, May 18 and June 17, 2024	Interest charges on invoice #2325 and "on overdue invoice #2453"	$1,680.47
#2454	April 17, 2024	February 13, 25, 28 and 29 and March 7 and 15	Disbursements and interest on invoice #2325	$1,476.33
#2455	April 17, 2024	March 18, 19, 20, 22, April 8, 9, and 16	Disbursements and interest charges on invoice #2227	$4,676.19
#2559	May 15, 2024	May 15, 2024	Disbursements	$31.06
#2540	June 7, 2024	January 26 – June 6, 2024	Mr. Liggett: 187.3 hours; Law Firm Staff: 3.8 hours	$83,396.18
#2587	June 27, 2024	June 10 – 26, 2024	Mr. Liggett: 6.3 hours; Law Firm Staff: 1.3 hours	$2,976.96
#2653	August 1, 2024	June 28 – July 31, 2024	Mr. Liggett: 48.7 hours; Law Firm Staff: 7.9 hours	$22,785.37
#2827	October 29, 2024	August 9 – October 22, 2024	Mr. Liggett: 85.8 hours; Law Firm Staff: 12.4 hours	$41,856.36

#2891	November 14, 2024	November 8 – 9 December 15, 2024	Mr. Liggett: 0.70 hours and interest charge “on overdue invoice #2891”	$310.05
#2968	January 6, 2025	December 16, 2024	Mr. Liggett: 0.60 hours	$337.79

[30] The Bills described in the table are those that were attached to the appointment. As set out in the table, the Law Firm did not issue the Bills to the Client on a regular basis, and I found overlapping dates from one Bill to another. I have also noted that on three of the Bills, the Law Firm charged the Client interest on the Bill itself. As registrar who regularly reviewing lawyers’ bills in *LPA* proceedings, I found the way in which interest was applied on the Law Firm’s bills confusing and I have no doubt it was confusing for the Client and Ms. Arnaldi.

[31] Under s. 71(4)(e) of the *LPA*, one of the factors I must consider is whether the time was reasonably spent. Given the amount of time Mr. Liggett claims he spent on the Client’s file to justify his fees, I consider this factor to be of substantial weight. The Law Firm’s Bills do not provide a total of the hours recorded by each individual recording time for the billing period and I have manually totalled the hours on the Bills before me, a time-consuming process that should not be necessary for a registrar to undertake. The fact that the number of hours recorded by Mr. Liggett and his staff was not readily apparent on the Bills would also be frustrating for his clients. I have generally summarized the work performed for the Client under headings describing the major steps in the proceedings. In the circumstances of this case and given the narratives on the Bills, I have found it necessary to reproduce several entries (more than I normally would) as examples of time I have found to be unreasonably spent and problematic billing practices.

Opening the Probate File and the Petition (August 7 through September 2023)

[32] The Client testified that when he retained him, Mr. Liggett advised him that the fastest way to get the Deceased's remains released from the morgue was if he were appointed the administrator under the 2022 Will and that Mr. Liggett told him it could be done quickly by a desk order or a short application in court. The Client testified that Mr. Liggett advised him that as an administrator, his legal fees would be paid from the estate. The Client testified that Mr. Liggett did not provide him with a written opinion analyzing the relevant law and setting out the potential risks if his application was unsuccessful (such as having to pay his own legal fees and potentially pay the legal costs of the opposing parties). This evidence was not disputed.

[33] Mr. Liggett repeatedly stated during his testimony that he always encourages his clients to try to resolve their disputes out of court. He admitted that even though he knew the Client's relationship with the other beneficiaries was acrimonious, he encouraged the Client to attempt early resolution with his family. The week after he was retained, Mr. Liggett wrote to Mr. Schellert, Carmen and Stephanie advising that he would be seeking an order appointing the Client administrator of the Deceased's estate under the 2022 Will, seeking their consent to the appointment. He testified that he prepared the filings for the Probate File hoping to obtain the Client's appointment through desk order.

[34] Mr. Liggett advertises that he is an experienced estate lawyer, however, several of the entries include time spent by the legal staff to research and review the court rules and forms. I note the following examples: an entry on August 14 for 4.60 hours, "LS-GS Reviewing Documents including: reviewing law, client emails, CLE, court forms and practice directions and drafting all the forms and affidavits needed for grant of probate" and an entry on August 18 for 0.40 hours for "LS-GS Reviewing Documents Including: Researching law on shortening the notice period". On August 21, a legal assistant had five separate entries: an entry of 0.20 hours for "LS-GS Reviewing Documents Including: research on different forms"; an entry of 0.10 hours

for “LS-GS Reviewing Documents Including: Review of court rules”; an entry of 0.90 for “LS-GS Drafting documents including: Drafting Form P41 after researching law, court rules and CLE”; an entry of 0.40 for “LS-GS Drafting documents including: Reviewing rules and forms and drafting Order for appointment as an administrator”; and an entry of 0.20 hours for “LS-GS Drafting documents including: Drafting Order dispensing notice”. In my view, it is not reasonable for a lawyer to bill their clients for the time spent by their administrative staff reviewing court rules and forms, particularly in areas of law in which the law firm professes to have experience. This legal training should not be passed on to clients and is part of a law firm’s overhead.

[35] The Client testified that after he had confirmed witnesses willing to swear affidavits, the Law Firm staff provided him with draft affidavits in template form to complete and that he then spoke to the various witnesses about their evidence and distributed the affidavit templates to them. He said that he also arranged for some of the witnesses to have their affidavits commissioned before a notary public (others were commissioned by Mx. Hesse). Mr. Liggett did not dispute this evidence and in fact confirmed that it is his standard practice to direct his staff to prepare draft affidavits in a template form, only completing the first two or three paragraphs, and then send the draft affidavits to clients to complete themselves. He testified that once the clients returned the draft affidavits, he and his staff would review and finalize them, and that sometimes this took “several rounds”. Mr. Liggett confirmed this was his practice with the Client’s matter. At the same time, he maintained that he was actively involved in the drafting and revising of several affidavits. For example, in his entries for August 17, 18, 22 and 23, Mr. Liggett had several entries in which he indicated that he was drafting affidavits (among other things). I calculated that he billed 16.2 hours, charging the Client $6,399 in legal fees.

[36] The Client testified that the affidavits provided to him by the Law Firm repeatedly contained typographical mistakes and basic errors. For example, he said that several drafts of his first affidavit indicated that he was a physician, and he had to point this error out to Mr. Liggett and the Law Firm staff on more than one occasion. This was evidenced in an email the Client sent to Mr. Liggett on August 28

(Exhibit #4), as well as in an email Mr. Liggett sent the Client on September 13 (over one month after being retained), in which Mr. Liggett wrote, “my apologies = I read somewhere your occupation was physician” (Exhibit #5).

[37] I discuss further below the evidence that the Client questioned the Law Firm’s fees from the first Bill under the other factors I have considered, but the evidence satisfies me that Mr. Liggett knew that the Client had concerns about the fees being charged, including specific objections, and advised that he could not pay these fees. For example, in an email sent to Mr. Liggett the morning of August 28, the Client points out to Mr. Liggett that there “have been some very simple mistakes made on the documents sent over to us, that we have had to send back with corrections that just should not have happened” listing specific examples and objecting to the fees charged for this work (Ex. #4). The Client and Ms. Arnaldi expressed to Mr. Liggett their concerns about the fees, stating:

> Once adjustments to address our concerns that are listed above are made are we able to get some type of estimate on what the total cost for this is going to be? We are sensitive to charges and are trying our best but we cannot financially afford to pay these types of invoices out of pocket.

[38] Mr. Liggett responded to the Client in a lengthy email a few hours later, apologizing for the “invoice shock” and advising that “of course, my administrator will critique our accounts for you”. There was no evidence before me that Mr. Liggett adjusted his fees at any time during the retainer and Mx. Hesse testified that their “critique” of the accounts was to explain the entries and they did not reduce them. In this email, Mr. Liggett also advised the Client that it was difficult to provide an estimate of fees “because it depends on the many different choices all parties can make to complicate or prolong the dispute” and that “based on your instructions about the family history, we understand there will be no agreement …” I note this email was sent before the Probate File was opened. Mr. Liggett later stated in the August 28 email that, “like building a house, we have the foundation almost completed …”.

[39] In the Client's response email of August 29, he stated "we were just under the impression that the retainer provided would cover the cost of all of this as the physical application to the court was explained to us as a fairly simple document and one that we ourselves could have completed and filled out." Mr. Liggett then provided the following response in an email to the Client dated August 30, explaining why the process was more expensive than the Client had anticipated:

> Thank you for your patience.
>
> To put all our efforts in context, you do not have a comparatively simple and straightforward "desk order" application e.g. an uncontested divorce or uncontested probate of a Will when the Will has no mistakes and the applicant is named in the Will as the Executor
>
> ETC
>
> And in any event, the forms, rules, procedures and case law are constantly in flux. An example of the reality of the legal process is that the BC Continuing Legal Education Society for lawyers has offered day-long courses for experienced lawyers to learn how to file so-called simple "desk order" applications like an application for an uncontested divorce or probate. The CLE courses are needed because nothing is as simple as one wants, partly because the Court Registry [*sic*] can be rejected simply because the forms have changed or the wording is interpreted differently or the unwritten policies of the registry have not been satisfied. Despite the Chief Judge for BC issuing his Rules for the whole Province and Practice Directions, the Registrar of each registry can make their own policies and procedures which are different from the other registries. And, despite efforts to triple-check check [*sic*] we have the latest form and the latest rule or procedure ETC, we have had applications rejected literally because the form the registry wants is not the one we used from the court website with the registry saying their website is wrong. It is part of the reality of the practice of law to expect every application to be rejected at least once and it is a celebration when the registry accepts an application the first time without needing any correction.
>
> We have been busy pursuing your objective to have a court order as quickly as possible so you can serve all concerned especially a funeral home to take care of your grandmother. We have been drafting the multiple affidavits required including the delivery affidavit of my paralegal, so the 21-day notice period can be proven to have expired before you file your Probate Application.
>
> …

[40] The Client testified that he did not really understand Mr. Liggett's response in this email, but given Mr. Liggett's statement that "the foundation was almost completed", he assumed that most of the work preparing his application had been completed by that point.

[41] A Wills Search Notice is a required filing in probate proceedings. The Law Firm conducted a will search, which confirmed that the Deceased had registered the 1987 Will, but had not registered the 2022 Will. Before the Law Firm filed the Probate File, both Carmen and Mr. Schellert filed Form P29 notices of dispute in response to Mr. Liggett's initial letter, disputing the 2022 Will. Mr. Schellert's notice was filed in the Chilliwack Registry on September 8, 2023 (Chilliwack Registry, S-V-342) and it was served on the Law Firm the same day.[9] Carmen's notice was filed on September 6, 2023 (Chilliwack Registry, S-V-341), but it was not served on the Law Firm and the Client obtained a copy of it from the Chilliwack Registry.[10]

[42] Rule 25-10(12) provides that notices of dispute are in effect for one year (unless they are withdrawn). Under Rule 25-10(8), while a notice of dispute is in effect, an estate grant may not be issued by desk order, which means that for the Client to be appointed the administrator under the 2022 Will, the parties would have to appear before the court unless the notices were withdrawn.

[43] From late August (after the first Bill was issued), up to and including September 29 (the day the Law Firm filed the Petition and the Probate File), Mr. Liggett billed 57 hours. Mr. Ligget testified that he spent a lot of time researching the relevant law and drafting the pleadings, as well as revising the supporting affidavits. I note the following entries during this period:

- August 24, 4.50 hours, "Review documents including: pleadings, and correspondence from the client for content for his affidavit; and new caselaw including a recent BC Court of Appeal decision about when a Will will be varied for adult children; Drafting documents including email to client of recent BCCA case confirming test for adult children to vary a Will; and drafting revised affidavit for [Ms. Arnaldi]";
- August 28, 1.30 hours, "Review Documents including: draft affidavits and correspondence; drafting documents including long-form client probate Application to address issues with the Will and to support client's application to be appointed the estate Administrator";
- September 8, 6.90 hours, "Review Documents including: latest correspondence and draft affidavits in support of client application; instructing staff to provide affidavits confirming lack of response from beneficiaries to probate Notice, signing Wills

[9] See Affidavit #2 of Hawsar Mouhammed, filed on September 29, 2023 ("Mouhammed Affidavit #2"), para. 4 and Ex. A.
[10] See Mouhammed Affidavit #2, para. 6 and Ex. B

Registry search for "death event" … updating client affidavit with current facts about lack of action by children of deceased; responding to opposing counsel for [Mr. Schellert] with demand for Particulars, and research of current caselaw ref allegations in dispute notice and required process after Dispute filed";

- September 11, 7.10 hours, "Review Documents including: draft court documents including affidavits and updates from [Ms. Arnaldi] about the hospital morgue no longer providing information; arrange witness signing and drafting documents including affidavits for [Ms. Arnaldi] and the Client";
- September 13, 5.10 hours, "Review Documents including: correspondence about draft affidavits contents; Drafting documents including replies to client about dispute notices in the Chilliwack registry; updating probate documents including the P2 application and supporting affidavits; and researching current case law for client Petition";
- September 26, 3.50 hours, "Review Documents including: court documents including orders, and requisition for filing Probate package; drafting the petition and related orders";
- September 27, 3.20 hours, "Review Documents including: the land title search of the estate home, exhibits, and current case law; drafting documents including a query to the client about builder's lien on the title to the home of the deceased, and updating the petition and probate application"; and
- September 28, 4.80 hours, "Drafting and sending reply to client regarding litigation cost; updating petition with case law; reviewing photos for process server; preparing for filing and service of the court documents on each of the three other beneficiaries; drafting separate requisitions as requested by probate registry."

[44] There were no formal legal opinions or memoranda of law in evidence at the *LPA* review and Mr. Liggett admitted under cross-examination that he did not prepare any for the Client but said he sent the Client emails about the law.

[45] In the period before September 29, the Law Firm's support staff were also billing time for research and drafting pleadings, as set out in the following examples:

- August 24, 1 hour for "Drafting documents including: drafting the Long Form for probate" as well as 0.40 hours for "Drafting documents including: Reviewing Court rules and drafting Form P4 (long form)";
- September 18, 0.20 hours for "Reviewing Documents including: researching court rules";
- September 19, three separate entries of 0.70 hours each for the following: "Reviewing Documents including: reviewing law, CLE [Continuing Legal Education], WESA, probate rules"; "Reviewing Documents including: reviewing CLE and Court form and drafting petition"; "Reviewing Documents including: Reviewing law and drafting petition"; and
- September 21, 0.90 hours for "Reviewing Documents including: Reviewing WESA, court rules, practice directions to find out applicable orders", and 0.40 hours for "Reviewing documents including: Making a list of orders that can be asked for".

[46] The Law Firm had conducted a title search on the Deceased's home and discovered that a builder's lien was registered on the title and advised the Client about it. In response, on September 27, the Client emailed Mr. Liggett expressing his concern about the cost of the work being done on his file, stating:

> … Moving forward can we please put on hold the extra work being done outside of what is necessary to have an administrator or executor named on the estate. We can have a conversation once that has been determined however as mentioned before we are sensitive to charges and are concerned that should we not be granted the administrator or executor role then we will not be able to be reimbursed from the estate for any of this extra work, which we simply cannot afford to have happen … (Ex. #6).

[47] In response, on September 28, Mr. Liggett emailed the Client, stating the following (Ex. #6):

> … Yes we are not spending more time than necessary and we are sensitive to how large your next invoice will be, but the cost now is required to present a strong case and it is far less than what it would be if your mother and uncle insist on a trial.
>
> A great deal of time is required at the start, especially with so many affidavits. The objective is to present a very strong case to convince the court that a trial is not needed because all the evidence addressing the issues including the validity of the Will raised by the other beneficiaries in their dispute notices and to convince the other beneficiaries that they would have a difficult thus expensive court battle to convince the court to hold that the [2022] Will is not valid, and to convince them that an application to vary the Will to increase their shares will also be difficult given the number of witnesses you already have. …

[48] On September 29, the Law Firm opened the Probate File (Chilliwack Registry, P25123) by filing the Client's submission for estate grant in Form P2 (Ex. #2, Tab 2), together with the Client's affidavit in support of the application for grant of probate or grant of administration with will annexed in Form P4 (the "Client P4") (Ex. #2, Tab 3). The P2 is four pages in the standard form and includes the required relevant information (such as information about the Deceased, a list of the documents filed with the P2, and the schedule). The Client P4 is four pages long, consisting of 11 paragraphs, following the standard form. There are no exhibits to it.

[49] In the Probate File, the Law Firm also filed the requisite affidavit of delivery in Form P9, which was affirmed on August 30 by Ms. Mouhammed, and the required Wills Search Notice. The Law Firm also filed the following affidavits in support of the Probate File:

- Affidavit #1 of Agnes Christopher, a sister of the Deceased, commissioned by Mx. Hesse on August 24 ("Christopher Affidavit #1");
- Affidavit of Kelly Hutcheson, one of the witnesses to the 2022 Will, commissioned on September 18 by a notary public in Delta ("Hutcheson Affidavit");
- Affidavit of William (Bill) Hamill, one of the witnesses to the 2022 Will, commissioned on September 18 by a notary public in Delta ("Hamill Affidavit");
- Affidavit #1 of Esther Roubini, a friend of the Deceased, commissioned on September 18 by a lawyer in White Rock, ("Roubini Affidavit #1");
- Affidavit #1 of Ms. Arnaldi (then Morse), commissioned by Mx. Hesse on September 18 ("B. Arnaldi Affidavit #1");
- Affidavit #1 of Mary Shumbusho, a sister of the Deceased, commissioned by Mx. Hesse on September 21 ("Shumbusho Affidavit #1");
- The Client's affidavit #2, commissioned by Mx. Hesse on September 25 ("Client Affidavit #2"); and
- Mouhammed Affidavit #2, commissioned by Mx. Hesse on September 27.

[50] The Law Firm also filed a requisition in Form P41 (a requisition seeking an order in estate proceedings) in the Probate File, which indicates that attached to it is a Form P18 (authorization to obtain estate information) and a draft order appointing the Client the administrator of the Deceased's estate, pending disposal of the Petition (the "Client Appointment Application").

[51] On September 29, 2023, the Law Firm also commenced the Petition (Chilliwack Registry file S40017) (Ex. #3, Tab 1).

[52] The format of a petition, as set out clearly on the court forms, is in four parts (Part 1: Order(s) Sought; Part 2: Factual Basis; Part 3: Legal Basis; and Part 4: Material to be Relied On). The forms provide instructions for what is to be included under each part. The Factual Basis Part is to set out in numbered paragraphs the material facts on which the petition is based. In the Legal Basis Part, the petitioner is to specify the rule or other enactment relied on and is to "provide a brief summary of

any other legal bases on which the petitioner(s) intend(s) to rely in support of the orders sought."

[53] In the Petition, the Client sought orders under Part 25 of the *SCCR* and ss. 58 and 129 of *WESA*, authenticating the 2022 Will, appointing the Client administrator of the Deceased's estate, removing the notices of dispute, and delivering estate documents and property to the Client. Part 2 (the Factual Basis) of the Petition is 16 paragraphs. The legal basis part of the Petition is three paragraphs. The first paragraph sets out short excerpts of Rules 25-10(11) and 25-14(1.1), and the second paragraph reproduces short excerpts of sections 4(2), 103(1), 123, 129, 131(c) and 132(1) of *WESA*. The third paragraph is a heading "Case Law", with a list of nine cases, without any reference to the legal principes for which the cases stand or any explanation of how the law applies to the facts of the Client's case. For only the case of *Mortimer v. Bender*, 2020 BCSC 483, the following paragraph is reproduced:

> [118] … Part 25, including the twin goals of consolidating related matters into a single proceeding and enabling the court to deal with those matters as efficiently as possible.
>
> …
>
> [120] … The court has been given broad discretionary power to deal with the issues underlying a notice of dispute efficiently and to make related orders that will prevent notices from unduly inhibiting administration.

[54] In Part 4, the following affidavits are listed as the material to be relied on (all of which were also prepared and filed in the Probate File): Hutcheson Affidavit; Hamill Affidavit; Ms. Mouhammed's P9 affidavit of delivery; Mouhammed Affidavit #2; Client P4; Client Affidavit #2; B. Arnaldi Affidavit #1; Roubini Affidavit #1; Christopher Affidavit #1; and Shumbusho Affidavit #1. The Law Firm also filed a requisition to file the following affidavits in support of the Petition (several of which are listed in Part 4 of the Petition): Client Affidavit #2; B. Morse Affidavit #1; Christopher Affidavit #1; Shumbusho Affidavit #1; Hutcheson Affidavit; Hamill Affidavit; and Roubini Affidavit #1.

[55] Based on the entries in the Bills before me, by this point in the retainer, the Law Firm's fees were between $50,000 and $60,000 for a two-month period (the second Bill was not issued until late November 2023).

Attempts to have the Petition Heard (October 2023 through March 2024)

[56] After the Petition was served on the other beneficiaries, Mr. Schellert retained counsel, who began communicating with Mr. Liggett in early October expressing his client's opposition to the proceedings.

[57] On October 12, Mr. Liggett billed 7.20 hours for the following: "Review Documents including: a demand letter from opposing counsel; review the latest current law; drafting documents including replies to the client and supplementary affidavit for [Ms. Arnaldi], and response letter to opposing counsel." On October 12, the Law Firm's staff billed the following:

- GS had four separate entries (0.40, 0.20, 0.40 and 0.30) for the following tasks: "Reviewing documents including: review of filed copies"; "reviewing documents including: reviewing documents"; "reviewing documents including: research on who can direct the funeral homes to take possession of the body"; and "reviewing documents including: further research on who can direct the funeral homes to take possession of the body"; and
- There were also three entries at $125 per hour (0.50, 0.30 and 0.20 hours respectively) for the following tasks: "Drafting documents including: Manpreet drafting index for chambers binder"; "Drafting documents including: Manpreet drafting index for book of authorities" and "Drafting documents including: Manpreet drafting the index for affidavit of services binder."

[58] On October 13, Mr. Liggett billed 3.30 hours for "Review Documents including: correspondence and draft affidavit from the client; drafting documents including revised affidavit for [Ms. Arnaldi] and responses to client emails; arranging pre-requisites for the hearing to be set." The following entries were made by the legal staff on October 13:

- GS had three entries for the following tasks: "Reviewing Documents including: Research – WESA on funeral rights" (0.50 hours); "Reviewing Documents including: research on probate forms" (0.10 hours); and "Drafting documents including: reviewing law, court rules, different statutes and drafting notice of application" (2 hours).

- The following entries were billed at $125 per hour: “Drafting documents including: Manpreet made two binders for chambers and created labels” (1.30 hours); “Drafting documents including: Manpreet drafting pleading binders for the petition and the probate Application” (1.50 hours); “Drafting documents including: Manpreet made two binders – book of authorities” (0.90 hours); and “Drafting documents including: Manpreet drafting Form 17 – general requisition” (0.70 hours).
- An individual whose hourly rate is $125, recorded 3.5 hours for the following: “Requisition – short notice X2; notice of hearing form; research on Supreme Court civil rules; phone call to Chilliwack registry; review of client probate documents plus petition.”

[59] I find it unreasonable that Mr. Liggett billed the Client for the time spent by a legal assistant preparing binders and drafting the indexes to the binders. In my view these are purely administrative tasks, which are not encompassed in the phrase “preparing routine documents” in the Retainer Agreement.

[60] On October 13, in both the Petition and the Probate File, the Law Firm filed a notice of hearing, setting the Petition for October 23 (Ex. #2, Tab 15; Ex. #3, Tab 4). The words “without notice” are handwritten on the notice because the Law Firm had checked the box for “the petition is unopposed, by consent or without notice”. The hearing was set for one hour by Mr. Liggett, who indicated that the respondents had not provided time estimates. In the Probate File, on October 17, the Law Firm filed a requisition to file a copy of the 2022 Will, together with a handwritten note of the Client and a copy of the 2022 Will. In the Petition, the Law Firm filed a supplementary affidavit of Ms. Arnaldi on October 17 (“B. Arnaldi Affidavit #2”).

[61] On October 18, 2023, Mr. Schellert filed a requisition seeking an adjournment of the Petition. On October 20, Mr. Liggett billed 4.50 hours to “review documents including letter sent by opposing counsel last night, drafting documents including update to client and reply to opposing counsel again emphasizing adjournment agreeable for all issues except administrator appointment.” On October 22, the day before the Petition, Mr. Liggett billed 2.40 hours for the following: “review documents including: the client feedback to draft submissions; drafting document including revised submissions.” There were no submissions prepared by Mr. Liggett for any of the appearances in chambers in evidence before me at the *LPA* review.

[62] On October 23, Mr. Liggett and Mr. Schellert's counsel appeared in chambers in Chilliwack before Justice Walkem for approximately 30 minutes. The Client testified that he and Ms. Arnaldi attended the hearing, which was the first time they met Mr. Liggett in person. Justice Walkem granted Mr. Schellert's application and ordered the Petition adjourned. She directed that it be put on the assize list for the week of November 20 for a full day, ordering costs in the cause.

[63] In late October or early November, Carmen communicated that she was retaining counsel, but this was not confirmed until mid-November.

[64] In late October, Mr. Schellert's counsel advised that he would be filing a response to the Petition, as well as a requisition for a subpoena in the Probate File requiring the Client to deliver testamentary documents to the registry. The process for obtaining this type of subpoena is provided for in R. 25-12. On November 1, Mr. Liggett billed 5.6 hours as follows: "Review Documents including: update from counsel for [Mr. Schellert] saying filed documents are almost ready for service including a subpoena for testamentary documents; drafting documents including reply to opposing counsel and updates to clients; review of law and court rules including subpoena in an estate matter, security for costs, and definition of testamentary documents to advise clients".

[65] On November 1, Mr. Schellert filed his response to the Petition, opposing the relief sought and proposing that an independent third party be appointed as administrator (Ex. #3, Tab 7). In the Probate file, Mr. Schellert filed the requisition for a subpoena in Form P35, requiring that the Client deliver to the court the originals of the 1987 Will and the 2022 Will. Mr. Schellert also filed his first two affidavits in the Probate File and a response to the Client Appointment Application, opposing it.

[66] Between November 2 and 6, Mr. Liggett billed 21.8 hours. During this time, the entries on the Bill reflect that he communicated with the Public Guardian and Trustee to request if it would act as the administrator of the Deceased's estate, communicated with Mr. Schellert's counsel and Carmen's potential counsel, and worked on the Client's affidavit rebutting Mr. Schellert's affidavit evidence. He also

billed time for “attending [Scheduling] at Chilliwack Court to confirm assizes hearing and options” and “arranging for preparation and filing of updated binders to be filed for court”.

[67] The Chilliwack registry issued the Form P35 subpoena to the Client on November 7. On November 7, Mr. Liggett billed 7.50 hours for the following:

> Review Documents including: feedback from the client about the revised affidavit; and court rules about application set on assizes hearing; drafting documents including further follow up to [Mr. Schellert’s] lawyer about his feedback or approval is needed for the draft order for hearing 23 October; client’s rebuttal affidavit and draft supplementary affidavit for [Ms. Christopher] for deponent approval and Requisition to confirm assizes hearing; review of law for application options for client to make effective use of the one day hearing if there is no evidence provided to dispute the validity of the Will; telephone to counsel for Carmen to clarify Carmen’s position … telephone to the Public Trustee and drafted an email to answer initial questions.

[68] On November 8, Mr. Schellert filed four further affidavits in the Probate File, which specifically respond to Client Affidavit #2, the Christopher Affidavit, the B. Arnaldi Affidavit #1, and both the Hutcheson and Hamill Affidavits. On November 9, in the Petition, the Law Firm filed Ms. Mouhammed’s affidavit #3, the Client’s affidavit #3, and Ms. Christopher’s affidavit #2. Mr. Schellert’s counsel advised Mr. Liggett he intended to file an application seeking to cross-examine the witnesses on the affidavits filed. On November 10, 12 and 14, Mr. Liggett billed a total of 13.3 hours, including 6.30 hours on November 12 for the following:

> Review Documents including: feedback about the revised October Order, unfiled application, and affidavits from counsel for [Mr. Schellert]; review of applicable civil rules and caselaw preparation for the requested phone discussion with the client today; Telephone to the client about the client’s response to the new unfiled application should distinguish between speculation and material facts; research relevant legislation, court rules and case law; drafting documents including emails to the client with a list of homework as requested.

[69] On November 14, Mr. Schellert filed an application in the Probate File seeking leave to cross examine the Client, Ms. Arnaldi, Ms. Christopher, Ms. Hutcheson and Mr. Hamill on their affidavits (the “Cross-Examination Application”). That same day, the Law Firm filed a requisition setting the Petition for a one-day hearing during the

November 20 assize and seeking to consolidate the Probate File and the Petition. Mr. Liggett billed 4.70 hours on November 14 for the following tasks:

> Drafting and sending reply to client regarding: choice of estate administrator; sending an email to just Stephanie to ask for her agreement with [the Client] as to the choice of estate administrator; attending court [Scheduling] to confirm filing of client requisition and deadline for hearing binders, and registry process for new application by opposing counsel even though time estimate exceeds one day already set; reviewing client feedback to affidavits and applications from opposing counsel; and email from possible counsel for Carmen confirming not retained; and further draft order from opposing counsel despite terms of clerks notes; research recent estate law about meaning of "conflict of interest" and grounds to remove trustee; drafting response to public trustee.

[70] On November 17, Carmen's counsel filed a notice of appointment. Mr. Liggett's time entry on November 16 indicates that Carmen's counsel had asked for an adjournment of the upcoming hearing. Mr. Liggett testified that the opposing parties sought agreement on the appointment of a third-party administrator and that Carmen's counsel suggested Heritage Trust Company ("Heritage").

[71] On November 20, the Law Firm filed the Client's response to the Cross-Examination Application, opposing it (Ex. #2, Tab 24). In the legal basis section, Mr. Liggett submits that all of Mr. Schellert's affidavits should be struck and lists several cases, reproducing a paragraph from each, without explaining how the cases apply to the facts of the Client's proceeding.

[72] On November 22, Carmen filed her first affidavit, as well as her response to the Client Appointment Application, opposing it. Mr. Liggett billed the Client 5.70 hours that day for the following:

> Review Documents including: correspondence about the choice of estate administrator; review law about appointing interim administrator versus permanent; drafting documents including replies to the client and opposing counsel; reviewing case law on appointment of *pendente lite* administrator; review response and affidavit filed by Carmen.

[73] After Scheduling advised that no presiders were available to hear the Petition on November 24, it was rescheduled to the week of January 8, 2024, by consent. Mr. Schellert sought to have the Cross-Examination Application heard at the same

time as the Petition. I note that Mr. Liggett billed the Client for 1.40 hours on November 24, which included time spent to "research of law on cross-examination of witnesses."

[74] Mr. Liggett's time entries between late November and early January include several references to the appointment of Heritage as administrator. It is also clear from the narratives that Carmen's counsel advised she would be seeking an adjournment of the Petition and attempts were made to agree to the appointment of Heritage and avoid the hearing. On January 8, the affidavit of Alyssa Galloway, a legal assistant to Carmen's counsel, was filed in the Probate File (Ex. #2, Tab 29, although the exhibits are not reproduced). Ms. Galloway deposed that Mr. Liggett had communicated with the other parties that the Client would consent to the appointment of Heritage and had drafted a consent order to this effect, which was circulated in late November (paras. 5–8, referring to exhibits D through F). Ms. Galloway deposed that on December 13, Mr. Liggett emailed the parties requesting an additional term in the order before the Client would consent to the appointment of Heritage (para. 9, referring to Ex. G). On December 5, in the Probate File, Stephanie filed her first affidavit, which was commissioned on November 22, 2023 (Ex. #2, Tab 25 is an unfiled copy of this affidavit).

[75] From December 21 through January 10, Mr. Liggett billed 60.5 hours and his entries included research on various issues. For example, his entry on December 21 includes "review of latest caselaw ref appointment of the client as administrator", his entry on January 4 includes "research for case law ref client request to preserve ashes", and his entry on January 6 again includes "researching current case law on cross-examining witnesses." The narrative for Mr. Liggett's entry of 7.30 hours on January 8 states: "RESEARCH: case law confirming client defacto trustee eg do son tort, and case law appointing Administrator by the "tenor" of the Will; drafting documents including legal argument for submissions; and replies to client and opposing counsel." On January 9, the day before the Petition, Mr. Liggett billed 9.30 hours. The narrative on the Bill states: "Review Documents including: emails from the client and court and opposing counsel about the hearing commencing tomorrow

Wednesday; drafting documents including replies and submissions on behalf of the client to address issues to be raised by opposing counsel in addition to the client Petition; and case law index."

[76] Justice Verhoeven heard the Petition for a half day. He granted Carmen's adjournment application, ordered the Client to file an amended Petition "to properly set out the Factual Basis and Legal Basis" (para. 2) and ordered that the Client Appointment Application "may be reset on appropriate notice for a one-day hearing, to be heard at the same time, with an application to appoint a third-party administrator" (para. 4). He ordered that costs were to be determined in the cause.

[77] On January 10, Mr. Liggett billed 6.5 hours, and his narrative includes a description of the court proceedings, including "… Adjournment granted but an order made for a one-day hearing on just the issue of who will be the Administrator". The parties agreed to reset the Petition for the assizes the week of March 25.

[78] Based on the entries in the Bills before me, by this point in the retainer, Mr. Liggett's fees exceeded $100,000 for approximately five months of work with two appearances in chambers, neither of which were for more than half a day.

[79] On January 20, Mr. Liggett billed 5.20 hours, which included time spent drafting an offer to settle on behalf of the Client and time spent to "research current case law about variation claims by adult children." On January 22, Mr. Liggett billed 5.20 hours and his entry indicates that he spent time "reviewing correspondence from opposing counsel pushing consent order to appoint Heritage" as well as for "review of precedents for Petition update to clarify orders such as construction and rectification by the court to appoint client as Executor as his grandmother wishes; and review of current case law to add to Petition."

[80] Mr. Liggett billed 22.2 hours from January 26 through 29, which included time spent revising the Client's "inventory list and affidavit", communicating with the opposing parties about the Client's settlement offer, as well as amending the Petition. On January 30, the Law Firm filed the Client's "inventory affidavit", which is

the affidavit of assets and liabilities for domiciled estate grant in Form P10 (Ex. #3, Tab 16). On January 30, a legal assistant billed 0.30 hours for "editing case law in amended Petition." Mr. Liggett billed 1.40 hours on January 30, which included "arrangements to file client affidavit and amended Petition."

[81] The amended Petition was filed January 30 as ordered by Verhoeven J. (Ex. #3, Tab 15). In the Factual Basis part, several paragraphs were revised and approximately 20 paragraphs added. In the Legal Basis part, definitions from the *Trustee Act*, RSBC 1996, c. 464 were reproduced as a new paragraph 2 (in addition to the excerpts from the Rules and *WESA* in the original Petition). In the amended Petition, under the heading "CASE LAW including" (amended paragraph 4), additional case authorities have been listed and paragraphs from each case reproduced (in some instances, several paragraphs). However, it is simply an extensive "cut and paste" and there is no legal analysis or narrative provided to explain how the listed cases apply to the facts of the Client's case and are determinative of or support the orders he sought.

[82] Mr. Liggett's time entries reflect that by early February, Carmen's counsel was seeking mediation, and Mr. Schellert's counsel was seeking to convert the Client's Petition into an action.

[83] Carmen filed her response to the amended Petition on February 21, opposing the relief sought by the Client (Ex. #3, Tab 17). In contrast to the Legal Basis of the amended Petition filed by Mr. Liggett, in the Legal Basis of Carmen's response, under the headings "Validity of the 2022 Will is a Triable Issue", "the 2022 Will does not Name an Executor and a Name cannot be Read into the 2022 Will", and "[The Client] is not an Appropriate Administrator for the Estate", Carmen's counsel has set out the relevant legal principles and analysis from the case authorities she has listed and explained how the relevant law applies to the facts of the case. In the narrative for the time Mr. Liggett billed on February 22 (3.40 hours), he spent time to "research law on Will formalities in regard to allegations in response".

[84] In late February, Mr. Schellert retained new counsel, and on March 3, Mr. Liggett billed 5.30 hours for "Review Documents including: correspondence from new counsel for [Mr. Schellert] and client; reviewing pleadings ref request for Will by counsel for [Mr. Schellert]; drafting documents including replies to client and opposing counsel; review of law about the admissibility of extrinsic evidence on the issue of appointment by testatrix." In early March, the Law Firm filed a requisition setting the Petition for a full day on the assizes the week of March 25.

[85] Mr. Schellert's counsel advised that he would be taking steps to convert the Petition to an action and on March 12, he filed the Action in the New Westminster registry against the Client, Carmen and Stephanie (action number NW S252756) (Ex. #7, Tab 1 of the Action documents). In the statement of fact part of the Action, Mr. Schellert notes that the Client filed the amended Petition on January 30, but it "does not seek an order declaring that the [2022] Will is proven is solemn form, nor does [it] seek relief under Rule 25-14(4)" and that "despite the notices of dispute being filed in the Probate [File], the [Client] has not filed an application under Rule 25-14(4) seeking to declare the [2022] Will to be proven in solemn form and is attempting (in the Probate [File]) to propound the [2022] Will without first proving the [2022] Will in solemn form" (paras. 15 and 15). Mr. Schellert sought orders to pronounce against the 2022 Will and to pronounce the 1987 Will in solemn form. On March 14, in the Petition, Mr. Schellert filed a notice of application seeking an order to convert the Petition to an action (Ex. #3, Tab 21) (the "Conversion Application"). Among other things, in the Conversion Application, Mr. Schellert sought orders that the Probate File, the Petition, and the Action be consolidated.

[86] Carmen's counsel contacted Mr. Liggett in early March, advising that she would be filing an application seeking an order appointing Heritage as administrator, among other things. On March 13, in the Petition, Carmen filed her second affidavit (Ex. #3, Tab 19) and on March 15, in the Probate File, she filed her application seeking an order appointing Heritage as administrator, as well as an order transferring the Probate File and the Petition to New Westminster (the "Confirmation Application") (Ex. #2, Tab 32). On March 18, in the Petition, Mr. Schellert filed a

response to the Confirmation Application, consenting to the relief sought (on April 15, 2024, this response was also filed in the Probate File) (Ex. #2, Tab 34). On March 20, Carmen filed a response to the Conversion Application, consenting to the orders sought by Mr. Schellert (Ex. #3, Tab 24).

[87] Between March 13 and March 25, Mr. Liggett billed 59 hours. The narratives indicate that he was spending a lot of time working on reviewing the applications and affidavits filed by the opposing parties, drafting responses to the applications, drafting and revising affidavits, and preparing for the upcoming Petition hearing. For example, on March 17, he billed 7.30 hours for "Review documents, including: feedback and further exhibits from client; drafting documents including revised client affidavit", and on March 18, he billed 5.90 hours for "Review documents, including: feedback from client and dad to their affidavits; and further correspondence from opposing counsel including a response from [Mr. Schellert] supporting the [Confirmation Application]; drafting documents including multiple replies to the client about affidavit revisions; and replies to opposing counsel about binder index content, hearing preparation including research for current law on burden of proof on Respondents." On March 19, he billed 8.60 hours for "Review Documents including: correspondence and applications from opposing counsel; drafting documents including replies and client response to the [Confirmation Application]". On March 20, he billed 9.10 hours for "Review Documents including: pleadings; drafting documents including replies to client about notarized letters, and opposing counsel; and updated client application response to [Confirmation Application], with updated case law; and draft order for January hearing for feedback from opposing counsel; and updates to client."

[88] Mr. Liggett also billed time on March 21 and 22 to file responses and affidavits, and to prepare and revise a "consanguinity chart" and litigation chronology for the Petition hearing. The Law Firm filed the Client's response to the Confirmation Application in the Probate File on March 21, opposing all the relief sought other than the cancelling of the notices of dispute (the copies in evidence before me at Ex. #2, Tab 33 and Ex. #3, Tab 21 are unfiled). The response is 28 pages long. In the Legal

Basis part, Mr. Liggett has seven paragraphs of legal argument, each followed by excerpts from case authorities. Also on March 21, in the Petition, the Law Firm filed the Client's fifth affidavit, rebutting Carmen's second affidavit (Ex. #3, Tab 23, although the copy in the hearing record is not the filed copy).

[89] On March 22, in the Petition, the Law Firm filed the Client's response to both the Conversion Application and the Confirmation Application. The response is identical to the Client's response to the Confirmation Application filed in the Probate File, with only the notation added on the first page that it is also the response to the Conversion Application. On March 25, the day before the Petition was heard, Carmen filed her third affidavit, responding to the Client's fifth affidavit. An unfiled copy of Stephanie's second affidavit, commissioned on March 25, was included in the Law Firm's hearing record (Ex. #3, Tab 26) (it was filed on March 26).

[90] On March 26, the parties appeared before Justice Stephens for the Petition, as well as the Confirmation and Conversion Applications. The court summary sheet indicates that the hearing lasted for half a day. Justice Stephens ordered the hearing of the three matters adjourned and to be reset for two days, subject to any further order of the court. His order includes a schedule for written submissions, indicating that the Client was to deliver written submissions "on all issues arising" by April 9, the respondents were to respond by April 23, and reply and sur-reply submissions were to be filed by May 3 and 10 respectively. He ordered that costs of the appearance before him "shall be in the discretion of the judge hearing the two-day hearing."

[91] The order of Stephens J. required Mr. Liggett to draft it, and his entries indicate that he sent drafts to the opposing parties (together with a draft of the order of Verhoeven J. from the January appearance), but that he had to redraft it several times. The order of Stephens J. was entered on May 31, 2024 (Ex. #3, Tab 27); however, the order of Verhoeven J. was not entered until August 14, 2024.

Attempted Mediation and Settlement (April through September 2024)

[92] From March 27 up to and including April 9, Mr. Liggett billed 55.2 hours, including 17.30 hours on April 3 and 10.30 hours on April 6. His entries indicate that he was “drafting documents including new submissions ordered” or “drafting submissions per order”. On May 3, Mr. Liggett billed the Client 5.40 hours, which included reviewing the response submissions of the opposing parties, and drafting the Client’s reply submissions and emailing the submissions to the opposing parties.

[93] Neither the submissions nor the reply prepared by Mr. Liggett pursuant to the order of Stephens J. were in evidence before me at the *LPA* review.

[94] On May 22, Carmen filed a response to the Action, consenting to the relief sought (Ex. #7, Tab 2). On June 6, the Law Firm filed the Client’s response to the Action (Ex. #7, Tab 3). In the Legal Basis part of the Client’s response, there are five paragraphs, each a submission, with cases and excerpts from them reproduced below, without analysis. For example, paragraph 5 of the response simply states “with an award of Special Costs payable by the Plaintiff forthwith”. Below this, two cases are listed: *Leung v. Chang*, 2014 BCSC 1243 (CanLII) at paras. 83 and 84 (which are reproduced) and *Bull Estate v. Bull*, 2015 BCSC 136 at paras. 139 and 140 (which are reproduced).

[95] On June 11, Stephanie filed her response to the Action, consenting to some of the relief sought and opposing the order for costs, and adopting the legal basis set out in Carmen’s response (Ex. #7, Tab 4).

[96] On June 28 in the Petition, the Law Firm filed an application returnable July 15, seeking a “summary disposition” that the 2022 Will “is the valid last will of the Deceased” and for directions “that all other issues raised by the parties in the pleadings will be set for a two-day hearing no later than 30 September 2024 on a peremptory basis in the Chilliwack registry” and for an order for special costs payable “forthwith and in any event of the cause by each of the respondents personally” (the “Directions Application”) (Ex. #3, Tab 29). In support of the Directions Application, the Law Firm filed the first affidavit of Mx. Hesse, made on

June 26, 2024 (Ex. #3, Tab 28, although the second page of the affidavit is not reproduced). Mx. Hesse's affidavit is five paragraphs, and exhibits the order of Stephens J., together with emails from the opposing counsel.

[97] On July 5, the Law Firm filed a requisition adjourning the Directions Application by consent to July 29. On July 10, Mr. Schellert filed his response to the Directions Application, opposing the relief sought, asserting that the validity of the 2022 Will was a triable issue (Ex. #3, Tab 31). Mr. Schellert also filed an application in the Petition on July 10, seeking orders that the matter proceed as if it were an action and that the Probate File, Petition and Action be consolidated into one action (among other things) (Ex. #3, Tab 32).

[98] On July 18, the Law Firm filed the Client's response to Mr. Schellert's application, opposing it, together with Mx. Hesse's second affidavit (Ex. #3, Tabs 33 and 34). On July 21, Mr. Schellert served on the Law Firm a notice to mediate in the Action. On July 29, both Carmen and Stephanie filed their responses to the Directions Application, both opposing it (Ex. #3, Tabs 36 and 37).

[99] The parties (other than Stephanie) appeared before Justice Sukstorf on July 29, who ordered the Directions Application and Mr. Schellert's July 10 application adjourned generally. She ordered all the parties to attend the "scheduled hearing dates of September 12 and 13" and that no party could change the scheduled hearing dates without prior leave of the court (paras. 2 and 3 of the order). Justice Sukstorf ordered that costs of the hearing were to be determined by the court "after concluding the hearing set for September 12 and 13, 2024."

[100] On August 21, in the Probate File, Mr. Schellert filed an application seeking to renew the notices of dispute filed by him and Carmen, together with special costs (the "Renewal Application") (Ex. #2, Tab 36). The Renewal Application expressly indicates that it will be heard in New Westminster. On August 26, Carmen filed a response to the Renewal Application, consenting to the relief sought (Ex. #2, Tab 38). Stephanie filed a response to the Renewal Application on September 4 also consenting to it (Ex. #2, Tab 40, but the exhibit is an unfiled copy). On August 28,

the Law Firm filed the Client's response to the Renewal Application, opposing it (Ex. #2, Tab 39). On August 30, in the Action, the Law Firm filed the Client's application to dismiss the Action (Ex. #7, Tab 7).

[101] There is no dispute the parties agreed to attempt mediation, pursuant to Mr. Schellert's notice. Mr. Liggett billed time in late August to prepare the Client's mediation brief, as well as to attend the pre-mediation call with the Client and the mediator, Ashley Syer, on August 30. A copy of the agreement to mediate (although only signed by Mr. Schellert) was at Tab 3 of the mediation documents in Ex. #7. The parties had agreed to mediation "using video technology".

[102] Mr. Schellert and Carmen prepared a joint mediation brief (Ex. #7, Tab 1 of the Mediation documents). As noted at para. 5 of their brief, the submissions they had prepared pursuant to the order of Stephens J. summarized the facts and legal argument, explaining in detail "issues with the document [the Client] seeks to probate [the 2022 Will] and the inappropriateness of [the Client's] application to administer the estate." In the joint brief, they identified the following three issues for the Mediation: the appointment of an administrator (recommending Heritage be appointed); the distribution of the Deceased's estate (recommending that it be divided 45% to each of them and 5% to each grandchild, or alternatively following the 1987 Will); and the costs of the Mediation (recommending that each party should bear their own costs). The joint brief is eight pages long (50 paragraphs) and identifies several legal issues (primarily wills variation) with relevant authorities.

[103] The Client's mediation brief (Ex. #7, Tab 2 of the Mediation documents) is four pages long (22 paragraphs) and does not identify any legal issues or cite any relevant case authorities. For example, in the final paragraph, Mr. Liggett wrote the following with respect to the issue of costs:

> Case law confirms that estate disputes are treated the same as other civil disputes in regard to Costs with the result that it is no longer the estate which pays Costs for disputes – the Respondents will have to pay Costs to the Petitioner given the facts and law and the lack of evidence to support any of the allegations by the Respondents. Further, it is very likely the Respondents will have to pay Special Costs given current case law on baseless allegations.

[104] The Client testified that Mr. Liggett had advised him to seek costs of the Mediation payable from the estate. The Client testified that during the Mediation, which began on September 3, when Ms. Syer asked what he would be claiming as his legal fees and he said approximately $250,000, Ms. Syer and Mr. Liggett spoke about it separately (he was not linked into their discussion). Mr. Liggett then advised him that the parties would not agree to have legal costs paid from the estate.

[105] On September 4, Mr. Liggett and Mr. Schellert's counsel appeared in New Westminster chambers briefly before Associate Judge Hughes, who ordered the Renewal Application be heard at the same time as the Petition scheduled for September 12, and ordered that the notices of dispute were renewed until the application had been heard. It is clear from Mr. Liggett's narrative on September 4 (for 5.70 hours), that he went to the Chilliwack registry for a hearing, although none were scheduled in the Client's matters, and then to New Westminster for the Renewal Application:

> Review Documents including: pleadings; travel to Chilliwack registry for hearing then to New Westminster registry for hearing of the application by opposing counsel to extend their dispute notice; attended court; order made to adjourn the application to the hearing next week; reviewing the contents and index for court binders for hearing next week.

[106] As I noted, there were no reductions in the fees charged the Client, despite the fact that from the narrative, Mr. Liggett either was mistaken about the registry in which the hearing was scheduled (and charged the Client for this mistake) or charged the Client for time spent on another client's matter.

[107] The Mediation continued September 5 and both Mr. Liggett and the Client testified that it lasted into the evening, but the parties could not reach an agreement. Mr. Liggett's entry of 16.50 hours on September 5 is for the following: "Review Documents including: update from the client about assets; forwarding updates to the mediator; preparation for the continuation of mediation; attending mediation; no deal despite multiple counter-offers; notes to file to prepare for hearing with supplemental affidavit from client and Will witnesses to counter handwriting opinion."

[108] Although the parties did not resolve matters at the Mediation, they continued to negotiate terms of a settlement and entered into a settlement agreement dated September 9, 2024 (Ex. #7, Tab 4 of the Mediation documents). Among other things, the parties agreed that Heritage would be appointed administrator and its normal fees would be paid by the estate (para. 2). They also agreed that each party would pay their own legal costs and that no party was awarded any costs for any proceeding (para. 7). After a number of expenses were paid and distributed (to Carmen and the Client), they agreed that the "residue of the Estate is divided and distributed to the Parties, and will be paid to their respective counsel (if any) in trust, as follows: a) the two adult children of the Deceased receive 27.5% each; and b) the two grandchildren of the Deceased receive 22.5% each" (para. 13). The parties also agreed that they would "instruct their counsel to execute and enter a Consent Dismissal Order dismissing the Action as if tried on the merits" (para. 14) and that they would be equally responsible for payment of the mediator's fees (para. 16).

[109] At the *LPA* review hearing, the Client testified that by the time of the Mediation, he was exhausted by the proceedings, which had increased the acrimony between him and his family members, and he felt pressured to agree to the settlement because he just wanted it "to be over". He testified that Mr. Liggett told him that if he didn't settle and the matter went to a trial (as sought by Mr. Schellert and Carmen if there was no settlement), it would cost him $300,000 and because Mr. Liggett had advised he owed $250,000 in legal fees by that point, he could not afford to continue. The Client testified that as of the *LPA* review hearing, he had not received any of his share of the Deceased's estate.

[110] On September 11, Mr. Liggett filed an application returnable September 13, seeking to speak to the Petition (and the related Applications) by consent. On September 11, the legal assistant billed two hours for the following task: "Drafting documents including: phone calls with court and agent re changing hearing application to get 1 hour hearing." The parties appeared before Justice Douglas on September 13, who made the consent orders, reflecting the terms of the Mediation (Ex. #7, Tab 8 of the Action documents). At that same appearance, in the Action,

Douglas J. ordered it dismissed by consent “as if heard on its merits” and that each party will bear their own costs.

[111] The Client testified that in late October, the Law Firm advised him that he owed it over $275,000 in outstanding legal fees and disbursements (by this point, he had paid installments to the Law Firm totalling $35,000). The Law Firm asked the Client to sign a promissory note, under which he would agree to pay the outstanding fees and accrued interest. After receiving independent legal advice about the promissory note, the Client testified that he terminated the solicitor-client relationship.

[112] Mr. Liggett rendered the last two Bills after the solicitor-client relationship had ended.

Position of the Parties

[113] The Client objects to the Law Firm’s fees on the basis that they are excessive in the circumstances. In the Client’s particularized objections to the Law Firms Bills, among other things, he identifies that “irregular and unbridled staff charges were billed for matters which are more properly office administration” (para. 5) and that “excessive ‘document review’ and ‘review and research of court rules’ by both the lawyer and staff was charged, as if the Client was expected to pay for training” (para. 6). Essentially, the Client submits that the fees he was charged are not reasonable for the work performed and that the inadequacies in the Law Firm’s work indicate that the work was of no value to him.

[114] The Law Firm defends the fees it has charged the Client to pursue his file. In addition to the submissions noted at para. 5 above, among other things, in the written submissions, Mr. Liggett submits that it is “significant” that the Client was advised to seek independent legal advice about the Retainer Agreement, “but he chose not to until after he had consumed many hours of the Solicitor’s time, expenses and disbursements and experienced ‘settlement remorse’.” Mr. Liggett also submits that “it is significant that there was no objection by the Client to the

work being done or time being spent on his behalf by the Solicitor until after the Client settled his dispute and thus there was no opportunity for the Solicitor to withdraw from his retainer and prevent any further loss of his time he could use for other clients to pay his own overhead."

Discussion and Legal Principles

[115] In the circumstances of this *LPA* review, Mr. Liggett bears the onus of proving the reasonableness of the Law Firm's bills.

[116] Section 71(2) of the *LPA* provides that on a review, the registrar "must allow fees, charges and disbursements" for those services "reasonably necessary and proper to conduct the proceeding or business to which they relate" or "those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate."

[117] In the course of this analysis, the registrar must consider all the circumstances, including those enumerated in s. 71(4) of the *LPA*, which provides:

> 71 (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
>
> (a) the complexity, difficulty or novelty of the issues involved,
>
> (b) the skill, specialized knowledge and responsibility required of the lawyer,
>
> (c) the lawyer's character and standing in the profession,
>
> (d) the amount involved,
>
> (e) the time reasonably spent,
>
> (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
>
> (g) the importance of the matter to the client whose bill is being reviewed, and
>
> (h) the result obtained.

[118] The authorities on *LPA* reviews hold that at the end of the day, the registrar "should allow a fair fee commensurate with the work performed in the retainer and

taking into account all of the circumstances": *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals dismissed 2022 BCSC 329 and 2023 BCCA 123).

[119] In *Davies v. Hunter*, 1995 CanLII 1028 (BC SC), the former Madam Justice Baker dismissed an appeal from a registrar's decision in which the registrar had disallowed the lawyer's fees and disbursements as claimed. At para. 22 of *Davies*, Baker J. discussed the discretion of the registrar when assessing fees:

> 22 Whatever the rule may have been in the common law courts in England, the factors which may be taken into account by a taxing officer in British Columbia today are found in s. 71.1 of the *Legal Profession Act*. In *Roberts & Muir v. Price*, (1986) 1986 CanLII 773 (BC SC), 7 B.C.L.R. (2d) 211 (S.C.), Justice Southin concluded that on a taxation a taxing officer may consider whether a solicitor has shown reasonable care and skill, and "if the work is not up to standard he may deprive the solicitor of his fee, in whole or in part." The Court of Appeal dismissed an appeal from Justice Southin's decision brought on other grounds, but held that her approach was correct. In *Roberts & Muir*, Justice Southin makes the crucial distinction between disallowing a lawyer's bill for fees on the basis that the work done was of no value to the client, and making a finding of negligence which could result in recovery of damages. The taxing officer lacks jurisdiction to make the latter finding. The decision of a taxing officer that the work done by a lawyer was without value to his or her client, because what the lawyer did or failed to do caused the failure of a transaction, would not constitute issue estoppel in an action brought by the client for damages for negligence. But a Registrar is required to take into account the time reasonably expended and the result obtained for the client. If the Registrar concludes that the work performed was of no value to the client, because the lawyer acted without instructions, or failed to carry out his instructions competently and adequately, or took unnecessary or counter-productive steps, the Registrar may properly disallow some or all of the claimed fees and disbursements.

[120] As the circumstances set out in s. 71(4) of the *LPA* must be considered on a review, I will address each of them.

(a) The Complexity, Difficulty or Novelty of the Issues Involved

[121] In his particularized objections, the Client submits that the basic issues presented by the Client's estate proceedings "were not unduly complex or difficult or novel", reiterating this in his reply submissions. The following is Mr. Liggett's written submission on the s. 71(4)(a) factor:

> The Client admitted that he retained the Solicitor to help resolve a contest over the Last Will & Testament entrusted to the Client by his beloved

> maternal grandmother with the opposing parties being his own family and the background including a long standing acrimonious and difficult dispute with his family including his own mother. This estate dispute involved four parties including the Client, three counsel including the Solicitor, a change of counsel for one of the opposing parties, and unrepresented party and three different court proceedings. The Will was handmade by the deceased and did not clearly appoint the Client as the estate Executor, a role the Client felt his Grandmother had personally and repeatedly asked him to do.

[122] In my view, the Law Firm's submissions do not adequately address this factor.

[123] The Client's appointment as administrator was opposed from the outset by the Client's uncle and mother, who filed notices of dispute challenging the validity of the 2022 Will, and opposed the Client's appointment as administrator. Stephanie represented herself, but on my review of her pleadings and affidavits, it is clear she generally agreed with Carmen, which is what the Client had advised when he first retained Mr. Liggett, and I find that she was not a driving force of the opposition to the Client's proceedings or a difficult self-represented litigant requiring excessive time to manage.

[124] Estate proceedings before the court are often acrimonious. The evidence before me establishes that the opposition to the Client's proceedings was anticipated from the outset of the retainer and should not have surprised Mr. Liggett. While Carmen and Mr. Schellert filed were applications and cross-applications in the context of the proceedings, I am satisfied on the evidence before me that these applications were not complex or difficult and did not present novel issues of law.

[125] Based on the evidence before me, I find that the issues presented in the Client's estate matter were not particularly complex, difficult or novel.

(b) The Skill, Specialized Knowledge and Responsibility Required of the Lawyer

[126] In the particularized objections, the Client submits that the skill, specialized knowledge and responsibility required of Mr. Liggett "were never pronounced nor

demonstrated – indeed, given the result obtained, very real questions arise as to the Solicitor's familiarity with this kind of litigation."

[127] In his written submissions, Mr. Liggett made the following submission about this factor:

> Estate law is complex; and the Client's retainer involved four different parties including unrepresented and all parties were related with a history of acrimonious relationships. Experience was required not just knowledge of the law; the Solicitor had been practicing for over 30 years and is qualified as a family law mediator and arbitrator in addition to being a barrister.

[128] I find that the Law Firm's submissions on this factor are inadequate. In his reply submissions, the Client submits that the above assertion "invites careful review" and that "the actual evidence revealed little of either [skill or knowledge]".

[129] I reproduced several entries as examples in which Mr. Liggett and/or his legal staff billed the Client for review of procedural rules and forms. These were samples. I find that it is unreasonable that a lawyer, who advertises that he and his law firm have several years of experience in estate law, is charging clients fees for the review of standard forms and procedural rules within their practice area.

[130] When cross-examined about the number of entries in which he and the legal staff billed time to review the relevant court rules and forms, Mr. Liggett repeatedly stated that it was "prudent" to do this because these things "always change" (see, for example, Mr. Liggett's email to the Client reproduced above at para. 42). I find it concerning that a lawyer with Mr. Liggett's experience attributed the time spent preparing the Client's Petition and application to be appointed administrator to the "constant flux" of the court rules and forms and procedures (an explanation which is incorrect[11]) and I find that the extended time he and his staff took reflects a lack of familiarity with the current law. I find it unreasonable that the Law Firm's staff billed

[11] Contrary to Mr. Liggett's email, the Chief Justice of the Supreme Court does not issue the *SCCR.* The Rules are regulations enacted under the *Supreme Court Act*, RSBC 1996, c 443. The British Columbia Supreme Court Civil and Family Rules Committee (the membership of which does not include the Chief Justice) recommends changes to the Rules, which are then enacted through legislative amendments, a relatively lengthy process.

time to review the rules and forms, which are posted on the Court's website and updated when the regulations are amended. These forms include fillable and savable versions, with straightforward instructions as to how they are to be completed.

[131] I find that the evidence before me establishes that for much of the retainer, Mr. Liggett was "running up the clock" with work described as "review" of procedural rules and "research" of legal issues, which I find was unproductive and unnecessary and the value of which to the Client is not borne out in the filed pleadings. Based on the evidence discussed above, particularly the pleadings that were filed on the Client's behalf, I find that Mr. Liggett did not demonstrate the skill, specialized knowledge and responsibility required to pursue the Client's file.

(c) The Lawyer's Character and Standing in the Profession

[132] In his written submissions on this factor, Mr. Liggett wrote the following:

> After 34 years of practice, it is not surprising that the Solicitor has a history with the Law Society but this history only relates to administrative issues not problems with client representation. The only Law Society requirement the Solicitor has, which was by consent, is to have two signatures on trust cheques, which is a common good practice for all law firms. The good character and standing of the Solicitor is confirmed by his awards and other recognition by a variety of different organizations.

[133] A copy of Mr. Liggett's profile from the website of the LSBC (Ex. #12) shows that Mr. Liggett has been disciplined for issues with his accounting practices, which he characterizes as "administrative issues" (see the discipline hearing panel decisions reported at 2020 LSBC 12 and 2009 LSBC 36). He has also been disciplined for what the hearing panel described as his reckless misrepresentation to the LSBC that he was unavailable for a discipline hearing (see the discipline hearing panel decision reported at 2012 LSBC 07). In the most recent discipline case (the "2020 LSBC Decision"), Mr. Liggett made a conditional admission of professional misconduct and agreed to the proposed disciplinary action of a suspension for one month. As set out on the LSBC website, Mr. Liggett is not permitted to operate a trust account in his practice, except in accordance with the terms of a trust supervision agreement approved by the LSBC, which was not in evidence before

me. However, the LSBC found that Mr. Liggett "struggled with compliance issues with the trust and general accounting rules" of the LSBC for several years and received repeated cautions (2020 LSBC Decision, paras. 8–15). At para. 17 of the 2020 LSBC Decision, the hearing panel stated the following:

> Repeated failures to comply with trust accounting rules will usually be a marked departure [from the conduct that the Law Society expects of lawyers], particularly when, as here, the failures follow warnings from the Law Society. This is because the trust accounting rules are at the heart of the ability of the Law Society to regulate the financial integrity of the profession and to provide the public with assurances of the financial trust fidelity of the profession.

[134] I find that before me, Mr. Liggett has minimized his discipline history with the LSBC, which the hearing panel in the 2020 LSBC Decision described as "an extensive professional conduct history" (para. 28).

[135] I reproduced in the table above the dates on which the Bills were issued to the Client and the amounts claimed, as well as that some of the Bills were for interest or disbursements only. The Client and Ms. Arnaldi were unshaken in their testimony that the Law Firm repeatedly sent them Bills marked "draft", which they understood was so that interest would not accrue. I find that the evidence on the Bills before me reflects ongoing issues with Mr. Liggett's accounting practices. I consider the fact that Mr. Liggett has been professionally disciplined for accounting issues and has a restriction on his trust account are relevant to this *LPA* review.

(d) The Amount Involved

[136] In his written submissions, Mr. Liggett stated that "the value of the estate and related assets involved several million dollars". This is simply incorrect. The undisputed evidence before me, as set out in the Client's P10 and in the settlement agreement reached after the Mediation, is that the Deceased's estate was worth approximately $1.4 million.

[137] The amount claimed by the Law Firm is close to 30% of the value of the estate and exceeds the amount the Client received under the settlement agreement.

(e) The Time Reasonably Spent

[138] I have calculated that over the course of the retainer, Mr. Liggett billed 629 hours, and the legal staff billed 78.2 hours. I find that this time was not reasonably spent and was excessive. A review of a lawyer's bills is not a line-by-line audit (see, for example, *Fiddes Van Der Flier Law Corp. v. Lamoureux*, 2005 BCSC 981, at para. 63) and given the Bills under review before me, such an audit would be an impossible task.

[139] In his written submissions, Mr. Liggett wrote the following about this factor:

> The time spent on behalf of the Client was no more than necessary due to the demands on the Solicitor's time by the multiple parties and multiple counsel and multiple proceedings. The Solicitor provided detailed accounts regularly to the Client for all the time he and his staff provided to the Client **and – it is significant – that there was no objection by the Client during the retainer to any of the accounts received from the Solicitor after the first account to the Client was negotiated. It would now be significantly unfair to allow the Client's "settlement remorse" to be a basis to reduce the time spent by the Solicitor after the Client received almost daily updates about the time being spent in pursuit of the Client's objectives**. [emphasis original]

[140] I find that these submissions are inadequate. In my view, the Client's purported failure to repeatedly object to the Law Firm's accounts does not justify the hours recorded by Mr. Liggett and his staff. In any event, I noted above the Client's communications with Mr. Liggett after the first Bill was received, challenging charges. The Client also testified that when he received the second Bill from the Law Firm, he was shocked. He emailed Mr. Liggett on November 23, seeking a reduction in fees as they could not afford to pay them, and to have "the same deal" regarding the waiver of interest for payment in instalments (Ex. #9). Mr. Liggett responded by email the same day, stating "… we do not want to make [clients'] legal disputes worse by adding large legal fees … Yes, if you can commit to pay down the time spent on your behalf then we will not issue an invoice for the total so the compounding interest is avoided." He also added "we also do not spend more time than necessary to do our best for you – remember that drafting anything takes thought especially if to opposing counsel let alone the search and review of caselaw on the different technical issues" (Ex. #9)

[141] In the discussion above, I reproduced several entries from the Bills, including the time billed by both Mr. Liggett and the Law Firm's legal staff for various tasks.

[142] The Client submits that it is unreasonable of the Law Firm to bill him for what was effectively training of legal staff. I agree. As I have noted above, I find it unreasonable for a client to be billed for time spent by administrative staff to familiarize themselves with the relevant forms and court rules, or to conduct purely administrative tasks such as preparing a binder or calling the court registry. On the evidence before me, I find a large portion of the entries by the legal staff to be "bill padding" and I find that most of the administrative tasks for which the Client was billed are not encompassed in the terms of the Retainer Agreement and the fees charged were neither proper nor necessary.

[143] Mr. Liggett recorded the bulk of the time on the Client's matter. I understand that he is a sole practitioner, but I find that the time spent by Mr. Liggett was, in the circumstances of this case, unreasonable. Based on the evidence before me, both in the narratives in the Bills reproduced above and his own testimony, I find that Mr. Liggett spent far too much time "spinning his wheels" with nothing to show for it. For example, despite the express terms of Verhoeven J.'s order to amend the legal basis part of the Petition, as I described above, there is no legal analysis provided in the amended Petition, simply an extensive cut and paste of excerpts from case authorities. Given the amount of time Mr. Liggett recorded for researching the relevant law and drafting the amended Petition, I would expect to see legal analysis and clarification of the issues. Another example is in the mediation brief prepared by Mr. Liggett for the Client, which I also described above. In my view, the amount of time Mr. Liggett charged the Client to review the law and prepare the mediation brief is simply not reflected in the brief before me in evidence.

[144] As stated in *Davies*, above, I find that the work was not up to the standard expected of a lawyer who recorded the number of hours Mr. Liggett recorded on this file.

(f) Whether the Hourly Rate was Reasonable

[145] Mr. Liggett's hourly rate was $395 throughout the retainer and the rate charged for the legal support staff was $125. As noted, the Client did not take issue with the rates charged. I find the hourly rates are reasonable.

(g) The Importance of the Matter to the Client

[146] Both the Client and the Law Firm agree that the matter was very important to the Client, although Mr. Liggett's submissions about this factor are oblique at best. He wrote:

> The Client admitted the matter was very important to him because it was the personal and repeated request of his beloved grandmother that he administer her estate in accordance with he terms of the Will she personally gave him, despite knowing the likely objection by the family to the terms of the Will bypassing the children of the Deceased to favour her grandchildren, as confirmed by the deceased obtaining a letter from her physician that she was capable of making the Will. Further, the estranged mother of the Client refused the Client to give respect to his beloved grandmother with a funeral; instead the estranged mother of the Deceased [*sic*] left the deceased, her mother, in the morgue for many months then cremated her remains without notice nor involvement of the Client.

[147] As the Client stated in his reply submissions the fact that the matter was very important to him "cannot justify a $400,000 bill for this representation or result." I agree.

(h) The Result Obtained

[148] The Client submits that the results obtained for him by the Law Firm were "very poor" and that "almost nothing was accomplished by or in the litigation and the matter settled, improvidently, after a mediation."

[149] The Law Firm submits that the result obtained "was the one the Client chose after several days of mediation in September 2024, despite the likelihood of success at trial with seven different witnesses providing sworn affidavits the Solicitor drafted to support the Client's interim applications." There was no evidence before me on which to gauge whether the Client would have succeeded at a trial.

[150] Among other things, in the discussion above, I noted that Verhoeven J. had expressly ordered the Petition amended to "properly set out the Factual Basis and Legal Basis" and I then described the amended Petition, contrasting it with the response prepared by Carmen's counsel. Following *Davies*, I find that the work performed by the Law Firm was in large part of no value to the Client and that the evidence before me satisfies me that Mr. Liggett failed to carry out his instructions competently or adequately, and that he expended excessive time with a negative result for the Client.

Other Factors Considered in this Case

[151] The *LPA* provides that on a review of legal bills, I must consider all the circumstances of the case before me. A client's ability to pay is a factor that has been considered by registrars, although it may not be given as much weight as other factors. For example, in *Dreyer v. Nelson*, 2006 BCSC 1467 at para. 33, District Registrar Sainty (as she then was) noted that on a review of a lawyer's bill, a registrar might also consider additional factors to those enumerated under s. 71(4) of the *LPA*, including, to some extent, the client's ability to pay, but that, in her opinion, "a client's ability to pay should not be a 'critical factor leading to a major reduction of, or dismissal of, a lawyer's bill, whose only 'sin' was to take on an impecunious client'", citing *Kowarsky & Co. v. Williams*, [1998] B.C.J. No. 543 at para. 68 (BCSC Registrar).

[152] There is no dispute that the amount Mr. Liggett is claiming in outstanding fees exceeds the Client's portion of the Deceased's estate by over $100,000. There is also no dispute about the Client's income and that he and Ms. Arnaldi have no ability to pay the amount claimed by Mr. Liggett and that they advised Mr. Liggett not to perform extra work (as noted above). I am satisfied on the evidence before me that Mr. Liggett was aware of the Client's limited ability to pay legal fees from the outset of the retainer. I am satisfied on the evidence that despite Carmen and Mr. Schellert's immediate opposition to the Client's appointment as administrator under the 2022 Will, which presented a real risk that the Client could not recover his

legal fees from the estate, Mr. Liggett billed on the Client's matter as if money was no object, to a degree I find unreasonable.

Disposition

[153] In considering the factors under s. 71(4) of the *LPA*, particularly the time spent and the results obtained, I find that the fees claimed by the Law Firm must be substantially reduced and I allow the Law Firm's fees at a total of $60,000, inclusive of disbursements and applicable taxes, interest, and including the amount the Client has already paid the Law Firm. I find that in the circumstances of this case, $60,000 represents a fair fee commensurate with the work performed.

Costs

[154] With respect to the costs of the *LPA* review, s. 72(1) of the *LPA* provides that the costs of an *LPA* review must be paid by the lawyer whose bill is reviewed "if 1/6th or more of the total amount of the bill is subtracted from it", or by the client "if less than 1/6th of the total amount of the bill is subtracted from it".

[155] I have reduced the Law Firm's Outstanding Bills by more than 1/6th. Pursuant to s. 72(1)(a) of the *LPA*, the Law Firm must pay the Client's costs of the *LPA* review. Costs of the *LPA* review are normally based on Items 1, 2, 24, 25 and 41 of the Tariff in Appendix B of the *SCCR*.

[156] The parties did not make submissions on costs. As stated above, if the parties are unable to resolve the costs owing to the Client by the Law Firm, or if there are issues of which I am not aware, they are to contact Scheduling forthwith so that I can schedule written submissions on costs.

"Registrar Gaily"