

Court of King's Bench of Alberta

Citation: Larocque v Kantor LLP, 2024 ABKB 327

Date: 20240531
Docket: 2101-13183
Registry: Calgary

Between:

Howard Louis Larocque

Appellant

- and -

Kantor LLP

Respondent

**Reasons for Decision
of the
Honourable Justice M.D. Slawinsky**

Appeal from Review Officer's Decision
D. M. Ellery, Review Officer
Dated the 17th day of February, 2022

[1] The Appellant, Howard Louis Larocque, retained the Respondent law firm, Kantor LLP through Mr. Timothy Louis, an intermediary lawyer in British Columbia, to represent him in litigation against his father. While acting in a position of trust, Mr. Larocque's father had allegedly appropriated and dissipated to his own benefit Mr. Larocque's approximately \$400,000 personal injury settlement from a childhood traumatic brain injury, which Mr. Larocque sought

to recoup. During its representation of Mr. Larocque in the underlying lawsuit, Kantor LLP billed Mr. Larocque periodically for its legal services on ten separate occasions, which accounts were received and paid for personally by Mr. Louis on Mr. Larocque's behalf. Mr. Larocque subsequently sought review of the accounts, resulting in a decision by the Review Officer to reduce the last in time billing by \$3000, but to not interfere with the first nine accounts. There is no dispute that only the tenth statement of account was rendered within the one-year limitation period set out in Rule 10.10(2).

[2] Mr. Larocque appeals the decision, asserting that the Review Officer erred in his review by:

1. failing to first determine whether all of the Kantor LLP accounts were periodic interim or periodic final accounts, and then to conduct his review within the applicable framework; and
2. failing to provide sufficient reasons for the amount of the reduction of the final account, which Mr. Larocque contends was insufficient in light of the evidence before the Review Officer.

[3] Kantor LLP opposes the appeal, taking the position that the Review Officer did not err in his decision. The Respondent contends that the accounts were determined to be interim final and that therefore only the last account was subject to review, but that in any event the Review Officer found all accounts except the last one to be reasonable and deference should be given to his decision.

[4] For the reasons that follow, I find that the Review Officer erred by failing to first determine whether the accounts were periodic interim or periodic final prior to conducting his review, and that the matter must be remitted back for reconsideration by a different review officer. While this conclusion renders it unnecessary to determine the second ground of appeal raised by the Appellant, I observe that the Review Officer's reasons for the reduction of the final account would not allow meaningful review of his decision were it necessary to do so.

Procedural Directions

[5] As a preliminary matter, the Court noted prior to issuing this decision that the style of cause in this action and in the underlying proceedings before the Review Officer was inaccurate. The Appellant was incorrectly identified as "Howard Leo Larocque", which in fact is the name of the Appellant's father. Further investigation revealed that the retainer letter between the Appellant and the Respondent also incorrectly identifies the client as "Howard Leo Larocque". The parties have acknowledged these errors and have consented to the Court making the necessary corrections without further appearances or submissions. Accordingly, the style of cause in this action and in the proceedings before the Review Officer are amended to identify the Appellant as "Howard Louis Larocque". It is also hereby declared that the client represented by the Respondent was the Appellant, Howard Louis Larocque, notwithstanding the error in the retainer letter.

The Hearing and the Review Officer's Decision

[6] The Appellant raised at the outset of the hearing that the question before the Review Officer was whether the periodic accounts rendered by the lawyer were final or interim (see Transcript of proceedings before the Review Officer [*Transcript*] at p 1, lines 38-39). Both

parties then made submissions with respect to the distinction between periodic final and periodic interim accounts.

[7] The Review Officer, however, sidestepped this threshold question, advising that he would “reserve his decision on which accounts” were reviewable until after the parties had made their submissions with respect to the charges in the accounts (*Transcript* at p 4, lines 11-15, 25-26). He proceeded to ask the Appellant to respond to the Respondent’s description of the services provided by the law firm, and to identify the specific line items within the accounts with which he took issue.

[8] The Appellant declined to do so, raising several times again the issue of periodic interim vs periodic final (*Transcript*, p 10 lines 17-25, p 11 lines 5-11, and p 19 lines 13-21) because his central contention was that the accounts were periodic interim in nature, and that all the accounts taken together were unreasonable (*Transcript*, p 5 lines 19-24, p 13 lines 1-36, p 14 lines 24-30, p 20 lines 1-4).

[9] The Review Officer instructed himself on various principles with respect to review of accounts. However, despite assurances that he would make a decision on the characterization of the accounts, the Review Officer failed to do so (Transcript, p 21 line 6).

[10] Instead, in an express attempt to appeal proof his decision (*Transcript* at p 24 lines 20-22), the Review Officer nevertheless purported to assess the work falling outside the one year limitation period, and concluded that the first nine accounts were reasonable. He stated that he and the parties had “gone through all of the accounts”: *Transcript* at p 24, line 17, and that the Appellant had not identified any specific steps that were objectionable (*Transcript* at p 22 lines 1-2). It is unclear whether the Review Officer considered the reasonableness of each account standing alone (ie. as periodic final accounts), or in the context of the work performed as a whole (ie. as periodic interim accounts).

[11] The Review Officer accepted that Kantor LLP’s description of the work aligned with each account rendered, with the exception of the last account which was “clearly within time”: (*Transcript* at p 24, line 34). He found that the last account should be reduced by \$3,000 because some work was ascribed to a draft brief which has not been located (*Transcript* at p 24, lines 38-40).

Standard of Review

[12] A court hearing an appeal from a Review Officer’s decision is not *de novo*, it is an appeal on the record. The standard of review on appeal was described by the Alberta Court of Appeal in *Betser-Zilevitch v Prowse Chowne LLP*, 2021 ABCA 129 as follows:

[13] A review officer’s decision is entitled to deference on appeal, given the specialized knowledge and experience of review officers in assessing the reasonableness of lawyers’ accounts: *Rocks v Ian Savage Professional Corporation*, 2015 ABCA 77 at para 15. The standard of review is otherwise governed by the framework established in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235: Extrinsic errors of law and errors in principle are subject to review on a correctness standard. To the extent that the decision requires an interpretation of the rules of court and such interpretation is an extricable error of law, it is subject to review on a correctness standard. Where the question is one of fact,

or mixed fact and law, the standard of review is “palpable and overriding error”: see *Tallcree First Nation v Rath & Company*, 2020 ABQB 592.

Issues

[13] The issues that I must decide in this appeal are:

1. Whether the Review Officer erred by failing to first determine whether the Kantor LLP accounts were “periodic interim” or “periodic final”; and
2. Whether the Review Officer’s reasons are sufficient on the reduction of the final account.

Issue 1 - Whether the Review Officer erred in failing to first determine whether the Kantor LLP accounts were “periodic interim” or “periodic final”

[14] I find that the Review Officer erred in principle in failing to first make this necessary finding before conducting his review of the accounts.

[15] Rule 10.9 provides that the reasonableness of retainer agreements and lawyer’s charges are subject to review by a review officer in accordance with the rules. The presumptive limitation period for such reviews is prescribed in Rule 10.10(2) to be one year after the date on which the account was sent to the client.

[16] The authority afforded to a review officer contained in Rule 10.17(1) includes the power to determine the applicability of a time period, and to extend or shorten it. Rule 10.18(1)(a) limits a review officer’s jurisdiction to preclude interpretation of the retainer, but Rule 10.17(1)(f) allows them to review it for the purpose of exercising powers that are within their jurisdiction. They also may receive evidence and submissions by the parties and may determine which position is most reasonable in light of the retainer. The *Rules* must be read together for the review officer’s express powers to be meaningfully effective.

[17] Whether the retainer plainly communicates if accounts are periodic interim or periodic final is within the power of a review officer to determine, so long as interpretation of the retainer is not required. Further, the fact that the parties disagree about a term of a retainer, or that a term is unspecified, does not automatically displace the review officer’s authority to review the retainer for reasonableness, or to determine which parties’ position is reasonably enforceable (*Sweetgrass First Nation v. Rath & Company*, 2014 ABCA 426, leave to appeal to SCC refused, [2015] S.C.C.A. No. 67, at para 6).

[18] Proper characterization of a law firm’s periodic accounts as either interim or final is integral both to the manner in which they are assessed for reasonableness, as well as the determination of whether the limitation period is in issue.

[19] Periodic interim accounts are those which are pending a final account, or which are subject to change at some point in the future: *Samson Cree Nation v O’Reilly & Associés*, 2013 ABQB 350 at para 45 [*Samson Cree QB*]. The required assessment is to consider the accounts together as a whole, and determine whether they are reasonable with respect to the total amount of work done

[20] Periodic final accounts “are final and [reviewable] in themselves, with no regard to other accounts”: *Samson Cree QB* at para 46.

[21] The characterization as either interim or final also determines the applicable limitation period. When accounts are characterized as periodic interim, all accounts since the beginning of the file are subject to review as long as the last account was submitted for review within the applicable timeline: *Samson Cree QB* at paras 21, 24. The one year limitation begins when the last account is rendered. If they are periodic final, each account is reviewable individually, and the limitation period is measured from the time that each one is rendered: *Samson Cree QB* at para 42. If the presumptive limitation period operates to exclude accounts from review, a review officer may at the next stage determine whether the limitation period should be modified to allow review.

[22] In this case, the retainer does not expressly specify which accounts are interim and final, but it does clearly contemplate that a client may receive both types of bill. The Appellant submitted that because the retainer agreement provided for more than simply hourly rate to be accounted for in the fees, the accounts are periodic interim: **Transcript** at p 2, lines 12-22. The Respondent argued that because the retainer did not provide for variation based on outcome, that the accounts were therefore periodic final: **Transcript** at p 2, lines 39-40. Other factors may also be relevant to the determination of this issue.

[23] It was open to the Review Officer to determine what type of account was reasonable to enforce based on the retainer agreement between the parties, as long as contractual interpretation was not required. If interpretation of the retainer is required, the Review Officer can refer the issue to an Applications Judge under Rule 10.18(1)(a).

[24] Because the Review Officer did not first make or seek a determination of whether the accounts were periodic interim or periodic final, his review of the reasonableness of the accounts is missing the requisite foundation. The underlying question as to the character of the accounts should have identified the correct review framework for the Review Officer to apply, and therefore his reasons with respect to all the accounts are insufficiently grounded and cannot stand.

Issue 2 - Whether the Review Officer's reasons are sufficient on the reduction of the final account

[25] Given my finding on the first issue, it is not necessary or appropriate to decide the second issue raised by the Appellant. Determinations must first be made as to the characterization of the accounts, which accounts are within the review officer's jurisdiction, and the manner in which they will be reviewed.

However, I do observe that that the last account rendered by the Respondent, which totalled over \$6,000, related exclusively to research for and drafting of a legal brief, which to this day has not been provided to the Appellant and cannot be located by the Respondent. The Appellant did acknowledge that the legal research conducted, which was part, but not all, of an approximately \$1000 line item in the account, was provided to his new counsel. The balance of the account refers exclusively to services rendered to draft the missing brief. The Review Officer gives no understandable explanation for his decision to reduce the account by \$3,000 in light of these undisputed facts.

Conclusion

[26] The determination of the character of the accounts as periodic final or periodic interim was a prerequisite to determining the applicable limitation periods and the manner of reviewing

the accounts for reasonableness. Failure to do so constituted error. While the Review Officer purported to review all of the accounts in any event in order to pre-empt an appeal, it is not clear from the record whether he assessed the accounts individually or holistically. Neither type of review can be gleaned from the record.

[27] That requisite finding is one which a review officer is best placed to make if it can be done without requiring interpretation of the agreement. A review officer has specialized expertise, is best positioned to weigh evidence and make findings of fact, and has the ability to refer the issue to the court for determination prior to conducting the review.

[28] The entire decision is revoked and the Appellant's original application is remitted back to a different review officer for review.

Heard on the 18th day of January, 2024.

Dated at the City of Calgary, Alberta this 31st day of May, 2024.

M. D. Slawinsky
J.C.K.B.A.

Appearances:

Tim Louis & Company
Per: Tim Louis
for the Appellant

Kantor LLP
Per: Linda Lynch-Staunton
for the Respondent