

Firing A Personal Injury Lawyer Part 2 - What Happens When There Is No Contract?

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Earlier this year I [discussed some matters clients should consider](#) prior to firing a personal injury lawyer who was hired on a contingency fee basis. What if you've hired a lawyer but never signed a fee agreement? What, if anything, would you owe your lawyer if you fire them in these circumstances? Reasons for judgement were released this week by the BC Supreme Court, Kamloops Registry, discussing this topic.

In this week's case ([Baxter v. Mary Fus Law Corporation](#)) the Plaintiff was injured in a motor vehicle collision. He hired the Defendant law firm to represent him but never signed a fee agreement. The lawyer started a BC Supreme Court lawsuit. Prior to trial the client decided to switch lawyers. The original lawyer issued two bills asking the client to pay just over \$13,000 for services rendered. The client took issue with these accounts and asked the Court to review them.

The Court ultimately reduced the bills by approximately 25%. Prior to doing so Master Shaw made the following useful comments about fee obligations when a lawyer is hired and fired without a fee agreement being signed:

[20] *The issues in this review are:*

- 1) *what is a fair fee for the work provided to the client by the lawyer?*
- 2) *what are the disbursements that can be charged by the lawyer to the client?*

[21] *In Nathanson, Schachter & Thompson v. Inmet Mining Corp., 2009 BCCA 385, the court for the majority of the Court of Appeal, at para. 46, state:*

In the absence of an express agreement concerning payment, it is obviously an implied term of a retainer that the solicitor will be remunerated for his or her work. In this province, the contractual gap created by a failure of the parties to agree specifically on the terms of payment is filled by s. 71(4) of the Act, which stipulates that in the absence of an express agreement, the solicitor's fee will be assessed on the basis of the factors enumerated therein, i.e., on what has come to be called a "fair fee" basis.

[22] *That statement applies to this case. The lawyer and client never reached an express agreement concerning payment. The lawyer's fee is to be assessed on the basis of a "fair fee" by consideration of the factors set out in s. 71(4) of the LPA.*

[23] *Section 71(4) of the LPA states:*

(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.