

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 29

Date: 2026 02 03
Docket: KBG-SA-00985-2025
Judicial Centre: Saskatoon

BETWEEN:

HUTTERIAN BRETHREN CHURCH OF HILLCREST,
HCREST FARMING CO. LTD., HCREST EQUIPMENT
CO. LTD., RAINFINE NORTH AMERICA
IRRIGATION LTD., 102213428 SASKATCHEWAN
INC. and MEILICKE FARMS LTD.

Applicants

- and -

PROCIDO LLP, HANNAH PASLOSKI, BARRISTER
& SOLICITOR, and CHAD EGGERMAN, BARRISTER
& SOLICITOR

Respondents

Counsel:

Randall T. Klein, K.C.
Troy A. Baril and Ibukun F. (Lola) Adebogun

for the applicants
for the respondents

FIAT
February 3, 2026

CURRIE J.

[1] This application relates to fees charged by a law firm to its clients. The applicants ask the court to set aside retainer agreements and to conduct a *quantum*

meruit assessment of the law firm's fees.

A. Circumstances

[2] The applicants are the following related corporations: Hutterian Brethren Church of Hillcrest, Hcrest Farming Co. Ltd., Hcrest Equipment Co. Ltd., Rainfine North America Irrigation Ltd., 102213428 Saskatchewan Inc., and Meilicke Farms Ltd. The respondents are the law firm, Procido LLP, and two of its lawyers, Hannah Pasloski and Chad Eggerman (referred to collectively as "the law firm").

[3] The law firm represented the applicants in two commercial transactions. One transaction was the sale of 24 quarter-sections of farmland to Veripath Farmland LP. The purchase price was \$12.5 million.

[4] The other transaction was the applicants' refinancing with the Bank of Montreal ("BMO"), implementing a loan in the amount of \$145 million.

[5] In both transactions the law firm was instructed, on behalf of the applicants, by Ben Wollman, president of the applicants, and by Leonard Wollman, secretary/treasurer of the applicants.

[6] Leonard Wollman signed a retainer agreement relating to the applicants' sale of land to Veripath ("the Veripath retainer agreement"). That retainer agreement is in the form of a letter from the law firm, dated May 9, 2025. Mr. Wollman signed the agreement, indicating acceptance of the terms, on May 26, 2025. The Veripath retainer agreement includes the applicants' agreement to pay the law firm's fee, but it does not state an amount of the fee or how it is to be calculated.

[7] Also on May 26, 2025 both Ben Wollman and Leonard Wollman signed a direction to the law firm. That direction included authorization to pay the law firm's fee out of the proceeds of the sale. That direction also does not state the amount of the

fee or how it is to be calculated.

[8] The sale closed, and on that transaction the law firm charged a fee of \$93,750.00, equal to 0.75% of the purchase price. That fee was paid to the law firm on June 5, 2025 out of the sale proceeds. The law firm's associated account is Invoice 7514 ("the Veripath account").

[9] Ben Wollman signed a retainer agreement relating to the applicants' refinancing with BMO ("the BMO retainer agreement"). That retainer agreement is dated July 3, 2025.

[10] The BMO retainer agreement recognized that, of the \$145 million being borrowed by the applicants, only \$97,950,000 was to be advanced at closing. The retainer agreement provided that the law firm's fee would be calculated at the rate of 0.75%, to be calculated on the amount being advanced at closing rather than on the full amount of the financing. (In fact, the rate appearing in the retainer agreement is 0.0075%, but there is no dispute that the rate that was in the minds of the parties was 0.75%.)

[11] The financing was completed, and BMO advanced \$97,950,000 to the applicants. The law firm rendered to the applicants Invoice 7799 ("the BMO account"), which included a fee in the amount of \$734,625.00, being 0.75% of \$97,950,000. The applicants did not pay the account or authorize its payment from funds being held in trust by the law firm.

[12] The applicants commenced these proceedings. The applicants and the law firm then agreed that the disbursements identified in the BMO account would be paid from funds in trust, but that the fee identified in the BMO account would remain unpaid pending these proceedings, with sufficient funds remaining in the law firm's trust account to pay the fee.

[13] In their notice of application the applicants sought relief that included referral of the law firm's accounts to an assessment officer. In the course of presenting written and oral argument, though, the applicants made it clear that they prefer a different approach. The applicants ask the court to:

- set aside the two retainer agreements, on the ground that they are unfair and unreasonable;
- extend the time for assessment of the Veripath account;
- conduct a *quantum meruit* assessment of fees on both accounts (rather than involving an assessment officer); and
- restrain any action by the law firm pending a determination of these proceedings.

B. Law governing review of retainer agreements

[14] The starting point is a reference to ss. 64 and 67 of *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1:

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

(2) The benchers may make rules:

- (a) respecting the form, content and scope of fee agreements;
- (b) prescribing the subject matter of provisions that shall or shall not be included in fee agreements.

(2.1) A member and a person who has entered into a fee agreement with a member pursuant to subsection (1) may attend a mediation session with respect to the fee agreement.

(3) A member or a person who has entered into a fee agreement

with a member pursuant to subsection (1) may apply to a judge of the court for a determination as to whether or not the agreement is fair and reasonable.

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

...

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

(a) on application to the court:

(i) by the person charged with the bill, within 30 days after the day on which the person received the bill;

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

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

(b) on application to the local registrar described in subsection (2), at the request of both the member and the person charged with the bill, at any time.

(2) An application pursuant to clause (1)(a) shall be referred by the court to the local registrar of the court at the judicial centre nearest to which the member who performed the services carries on the member's practice.

(2.1) On or before the referral by the court to the local registrar pursuant to subsection (2), a member and a person charged with the bill may attend a mediation session with respect to the bill.

(3) The court may restrain the bringing of an action with respect to that bill pending a reference pursuant to subsection (2).

(4) On an assessment of a bill pursuant to this Act, the local registrar may order any further particulars or details of the services for which the bill was ordered.

[15] As contemplated in s. 64(2), the Benchers of the Law Society of

Saskatchewan have implemented rules relating to retainer agreements, in the *Law Society of Saskatchewan Code of Professional Conduct* (“Code”). The applicants assert that both retainer agreements breach Rule 3.6-1 of that *Code*:

3.6-1 A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

[16] The *Commentary* accompanying Rule 3.6-1 provides:

[1] What is a fair and reasonable fee depends on such factors as:

- (a) the time and effort required and spent;
- (b) the difficulty of the matter and the importance of the matter to the client;
- (c) whether special skill or service has been required and provided;
- (d) the results obtained;
- (e) fees authorized by statute or regulation;
- (f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
- (g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer’s inability to accept other employment;
- (h) any relevant agreement between the lawyer and the client;
- (i) the experience and ability of the lawyer;
- (j) whether aspects of the matter have been delegated to non-lawyer staff supervised by the lawyer, and should be billed accordingly;
- (k) any estimate or range of fees given by the lawyer; and
- (l) the client’s prior consent to the fee.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them

and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a lawyer may revise an initial estimate of fees and disbursements.

[17] Justice Wilkinson discussed the concepts of fair and reasonable legal fees in *Zipchen v Bainbridge*, 2008 SKCA 87 at para 29:

[29] The controlling authority, as noted by the trial judge, is *Speers v. Hagemeister et al.* [1974 CanLII 1010, 52 DLR (3d) 109 (SKCA)], which established the following propositions:

- (1) fee agreements, particularly contingency agreements, must be construed as of the date they are made, not in hindsight;
- (2) “fair” relates to the manner in which the agreement was brought about, meaning the client fully understands and appreciates the agreement and no undue advantage is taken; and
- (3) “reasonable” relates to the amount payable to the solicitor, the actual work done relative to the work

anticipated at the time of the agreement, the risk undertaken, and the particular circumstances of the case, however, some deference should be shown to contingency agreements recognizing that they may assist impecunious litigants to obtain the services of a lawyer.

[18] Justice Wilkinson also confirmed, at para. 55 of *Zipchen*, that the onus is on the law firm to establish that a retainer agreement is fair and reasonable.

[19] As to what the court is to do if it concludes that a retainer agreement is not both fair and reasonable, Justice Wilkinson said at paras. 85-88 of *Zipchen*:

[85] Each case will be heavily dependent on its facts. The solicitor argued rectification was the only permissible remedy, citing *Speers*. It is quite true that rectification was the remedy the Court specifically mentioned in that case, but without any accompanying suggestion that it was the only equitable remedy available.

[86] In the recent decision of *Dear* [2008 ABCA 137], where a contingency agreement was invalidated because the lawyer had not adequately explained to the client the notion of costs, the Alberta Court of Appeal, after noting this was a finding of fact that was entitled to deference, nonetheless went on to state that the judge had erred in *varying* a contingency agreement after determining it had not been entered into fairly, saying he should have assessed the fees on a *quantum meruit* basis instead.

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

[88] The remedy must be tailored to the circumstances. ...

[Emphasis in original]

C. Extension of time regarding the Veripath account

[20] The applicants ask for an extension of time regarding the Veripath account. They make this request in light of the provision, in s. 67(1)(a)(i) of the *Act*, that an account may be assessed on application to the court “by the person charged with the bill, within 30 days after the day on which the person received the bill”. It is common ground that the applicants did not apply within 30 days after the day on which they received the Veripath account.

[21] As I have said, the applicants hope to avoid a s. 67 assessment by the local registrar, by way of the court conducting a *quantum meruit* assessment instead (flowing from a finding of unfairness or unreasonableness under s. 64). A s. 67 assessment remains the applicants’ alternate request, though.

[22] The *Act* provides, in s. 67(1)(a)(iii), that the court may grant an extension “if the court is satisfied that it is in the interests of justice to do so”. Granting the requested extension is appropriate. In *Machula v Kuse*, 2011 SKQB 370 at para 9, Justice Ryan-Froslic (as she then was) reviewed the factors that are to be considered on an application for an extension. It is not necessary for me to set out those factors here, because the law firm has advised that it does not strenuously oppose the request for an extension. The law firm takes this position because it recognizes that addressing the matter of assessment of the two matters together would not create a significant burden for the law firm. In its submissions, the law firm characterized its position as its “tacit consent” to the extension, subject only to the possibility that the court might conclude that an extension was not appropriate even in the face of such tacit consent.

[23] The applicants and the law firm provided reviews of some of the circumstances, with an eye to the factors cited by Justice Ryan-Froslic. Having considered those factors I find no reason for concluding that an extension is not appropriate. It is appropriate to grant the extension.

[24] Under s. 67(1)(a)(iii) of the *Act* the applicants are granted the extension that they seek.

D. Application for restraint

[25] The notice of application includes the request for an order restraining the law firm, under s. 67(3) of the *Act*. As I have said, though, after the applicants commenced these proceedings the parties agreed to funds being held in trust pending a judicial determination of the issues. At the hearing of this application the law firm confirmed that it has undertaken to hold those funds in trust pending these proceedings. Inherent in that undertaking is the provision that the law firm will not commence an action with respect to either account.

[26] In these circumstances, an order restraining the law firm is not necessary or appropriate. I decline to make it.

E. Whether the Veripath retainer agreement is fair

[27] As Justice Wilkinson said in *Zipchen* at para 29(2):

... “fair” relates to the manner in which the agreement was brought about, meaning the client fully understands and appreciates the agreement and no undue advantage is taken ...

[28] Here the applicants allege that the retainer agreement is not fair, on the basis that they did not fully understand and appreciate it. They say that:

- (a) they did not even know how the fee would be calculated on the Veripath sale until the sale closed; and
- (b) their knowledge and acceptance of a 0.75% fee calculation was based on misrepresentations made to them by the law firm.

1. Knowledge of how the fee would be calculated

[29] As to when the applicants knew how the fee would be calculated, both Ben Wollman and Leonard Wollman refer in their evidence to the May 26, 2025 meeting at which Leonard Wollman signed the Veripath retainer agreement. The meeting was attended by both Ben Wollman and Leonard Wollman, as well as by Ms. Pasloski and Mr. Eggerman. At that meeting the applicants reviewed documents relating to the Veripath sale, and they signed documents including the retainer agreement and the direction for payment.

[30] In his affidavit Ben Wollman provides his recollection:

5. During this meeting, I was not advised of the fees Procido intended to charge for the transaction.
6. I had no idea what the fees were until the transaction was completed. ...

[31] Likewise, in his affidavit Leonard Wollman provides his recollection:

15. During this meeting, I was not advised of the fees Procido intended to charge for the transaction.
16. I had no idea what the fees were until the transaction was completed. It came to my attention when I realized there were no proceeds of sale.

[32] Ms. Pasloski, in her affidavit filed in response, provides her detailed recollection of what occurred at the May 26, 2025 meeting. With regard to the fee, she says:

17. ... Both Leonard and Ben only signed the direction for payment after we had reviewed and discussed the preliminary statement of adjustments (“**Preliminary SOA**”) in depth.

...

22. Furthermore, during the May 26 Meeting and prior to signing the Direction to Pay (and to my recollection, the Veripath Retainer as well ...), Chad and I spoke at length about the Firm's standard rate for agricultural land deals being 0.75% of the purchase price as clearly stated in the Preliminary SOA that we provided to Leonard and Ben for their review ... In this case, the additional work conducted included the review of the pre-signed lease agreement and work to ensure the terms and conditions of the lease would align with the sale of property, as well as work connecting the proceeds of the Veripath Sale in alignment with the terms of the BMO Financing arrangement, with the initial documents for that BMO Financing transaction arriving on May 21, 2025. ...
23. I acknowledge that Leonard and Ben did initially express surprise at the value of legal fees and noted in the meeting they thought the value to be high. Both Chad and myself discussed these fees as a fixed percentage rate based on the value of the land, as the larger the value of a transaction is, typically the greater the complexity and risk, which increases the level of due diligence to ensure the transaction proceeds smoothly and successfully. ...
24. [Leonard and Ben] noted that real estate commissions for real estate agents were nearly \$350,000.00 (almost four times the amount of legal fees) ... Both Leonard and Ben expressed that they were less familiar with transactions of this size, due to their prior dealings typically being in the range of \$1,000,000.00 - \$2,000,000.00, and thus, they did not initially contemplate how fees increase when the value of the transaction increases due to the increased complexity, risk, and work required by lawyers.
25. After this discussion on the various charges in the Preliminary SOA, Leonard and Ben did not express any further discomfort or issues with the legal fees as quoted and signed the Direction for Payment and the Veripath Retainer during the meeting. ...

[Emphasis in original]

[33] A copy of the preliminary statement of adjustments referred to by Ms. Pasloski is exhibited to her affidavit. It includes the following information:

Statement of Account (estimated)	\$ 107,849.88
Legal Fees	\$ 93,750.00
<i>(0.75% of purchase price)</i>	
GST on Legal fees at 5%	\$ 4,687.50
PST on Legal fees at 6%\$	\$ 5,625.00
Disbursements	\$ 3,617.50
GST on *disbursements at 5%	\$ 169.99

[34] Ms. Pasloski's evidence in this regard is uncontroverted. While Ben Wollman and Leonard Wollman initially provided their recollections as quoted above, Ms. Pasloski's evidence was provided in response, with specific detail as to topics discussed and with reference to documentation that accords with her recollection. Leonard Wollman has filed an affidavit in reply to the law firm's affidavit evidence, but in his reply affidavit he does not dispute this detailed evidence of Ms. Pasloski's. Ben Wollman has not filed an affidavit in reply, and so he also has not disputed this evidence of Ms. Pasloski.

[35] Neither Ben Wollman nor Leonard Wollman has disputed the specific evidence that, at the May 26, 2025 meeting, they reviewed the preliminary statement of adjustments (which set out the proposed fee and the rate of 0.75%). Thus the evidence establishes that the applicants *did* know, by May 26, 2025, that the law firm's fee on the Veripath sale would be calculated at 0.75% of the purchase price, in the amount of \$93,750.00.

[36] The evidence also establishes, subject to the matter of the alleged misrepresentations, that the applicants fully understood and appreciated the retainer agreement.

2. Alleged misrepresentations

[37] The misrepresentations that the applicants allege are that:

- (a) the fee in the amount of 0.75% of the purchase price was a discount;
and
- (b) other law firms would charge 3% of the purchase price.

[38] There is no dispute that the law firm told the applicants that 0.75% was a discount, in the sense that other firms typically charge more. The law firm denies stating plainly that other firms would charge 3%. This circumstance is demonstrated in Mr. Eggerman's evidence:

18.c.i. While I did express to Leonard and Ben in our discussions at the May 26 Meeting, and June 25 Meeting that industry standard was higher than what we were charging, industry standard being between 1% - 3% in my experience as I have noted above, at no point during these meetings did I suggest other law firms would charge 3%, full stop ...

[39] Therefore, the law firm acknowledges that it stated to the applicants that other firms would charge 1% to 3%. The law firm disputes that it told the applicants that other firms would charge 3% (as opposed to 1% to 3%).

[40] For his part, Leonard Wollman says:

18. When I raised the issue with Ms. Pasloski and the Respondent, Mr. Chad Eggerman, partner at Procido (hereafter "Mr. Eggerman"), I was informed this was a discount as other firms would typically charge 3%.

...

20. I was repeatedly reassured by the Respondents that this was a discounted fee because we were long standing *[sic]* clients of Mr. Wardell and that other firms would charge over three times as much.

[41] In the course of the discussion with Leonard Wollman and Ben Wollman, Mr. Eggerman referred to an industry rate of 1% to 3%. He may not have gone as far

as to say that another firm certainly would charge 3% on the BMO financing, but the Wollmans reasonably could have understood his message to be that some law firms would charge as much as 3%.

[42] As to whether such a statement was a misrepresentation, what constitutes a misrepresentation was reviewed in *Cattell v Lazar*, 2024 SKKB 163. Among other requirements, a representation must be untrue, inaccurate or misleading to be a misrepresentation. Here there is no evidence before me indicating that either of the representations (“discount” or “other firms would charge 3%”) was untrue, inaccurate, or misleading. Therefore it is not established that the applicants’ understanding and appreciation of the Veripath retainer agreement was based on a misrepresentation from the law firm.

3. Conclusion as to whether the Veripath retainer agreement is fair

[43] The evidence establishes that the applicants fully understood and appreciated the Veripath retainer agreement. It was brought about in a fair and timely manner. That being the case, the Veripath retainer agreement is fair.

F. Whether the BMO retainer agreement is fair

[44] As with the Veripath retainer agreement, the applicants allege that the BMO retainer agreement is not fair, on the basis that they did not fully understand and appreciate it. The applicants knew that the BMO retainer agreement provided for a fee calculated at the rate of 0.75% of the amount to be advanced (\$97,950,000.00), for a fee amount of \$734,625.00. As with the Veripath retainer agreement, though, they say that their knowledge and acceptance of a 0.75% fee calculation was based on misrepresentations made to them by the law firm.

1. Discussions about the fee

[45] As I have related, the BMO financing followed immediately on the heels of the Veripath sale, and work by the law firm on the two transactions overlapped. The discussions about the fee to be charged on the BMO financing commenced with Ms. Pasloski's email of June 17, 2025 to Leonard Wollman (identified in her affidavit at para. 38 and set out as Exhibit 3), which included the following paragraph:

In advance of our pending appointment, we wish to confirm with you that the legal fees associated with this financing will follow the same percentage-based format as your real estate matters, set at 0.75% of the \$145,000,000.00 loan and coming to a total of \$1,087,500.00, non-inclusive of disbursements and applicable taxes.

[46] This email was followed by a meeting between Leonard Wollman and Ms. Pasloski on June 20, 2025. Leonard Wollman relates:

23. On June 20, 2025, I attended Procido's office to complete the environmental certificate, which was a requirement of the BMO financing. On that date I met with Ms. Pasloski. I was advised during this meeting by Ms. Pasloski that the fees for the transaction would again be 0.75% on the \$145,000,000.00 loan.
24. I was again advised by Ms. Pasloski that Hillcrest was receiving a discount as loyal clients as "other firms" typically charge 3% for this type of transaction.
25. I expressed that I felt this fee was too high, especially considering the full amount of the loan was not being advanced at close. I was reassured this was a discount.

[47] Ms. Pasloski describes that meeting:

40. The fee discussion was a shorter discussion during the June 20 Meeting than the detailed discussion on June 25, 2025 (discussed below), but similar in the vein that the initial transaction value (0.75% of the whole \$145,000,000.00) was considered too high by Leonard.

I noted to him that the fees were calculated on a fixed percentage fee basis, just as with the Veripath Sale, and that the fee value is a result of the substantial value of the BMO Financing transaction that was well and above anything that the HBCH Clients has ever done (more than 100 times larger than previous transaction), the complexities involved with numerous corporate entities being subject to the financing arrangement and the due diligence required to align all borrower/guarantor corporations with the terms of said financing arrangement, as well as the amount of risk involved both to the HBCH Clients and the Firm for making the transaction happen.

41. I advised Leonard that it was my understanding that fees would likely to be greater through other firms that do similar work, as it was my understanding that the 0.75% was below market for these types of transactions. ...

[48] The matter of the fee on the BMO financing was addressed again at a June 25, 2025 meeting. Leonard Wollman relates his recollection:

26. On June 25, 2025, Mr. Ben Wollman and I attended Procido to complete more paperwork. We met with Mr. Eggerman. There were revisions to the environmental certificate as well as some other documentation signed. Mr. Eggerman again advised that the flat fee would be 0.75%, this time only on the amount being advanced of \$97,950,000.00. Again, I advised that I felt this was too high.
27. Mr. Eggerman again advised me that Hillcrest was receiving a discount as loyal clients as “other firms” would typically charge a flat fee of 3% on this type of transaction.
28. After a long discussion and it being repeatedly stated Hillcrest was receiving a significant discount of well over \$2,000,000.00, I verbally agreed to the fee of 0.75%.

[49] Mr. Eggerman responded to this evidence in his affidavit:

- 18.d.iii. ... It was Leonard and Ben who proposed that the fee would be calculated against the funds being forwarded, being \$97,950,000.00 and as set out in the BMO Retainer, as opposed to the total transaction value of

\$145,000,000.00. This counter-proposal was accepted by the Firm.

[50] Likewise, in response Ms. Pasloski has provided detail of her recollection of the meeting:

44. For the first hour and a half of the June 25 Meeting, Chad and I spoke in detail about the gravity of the BMO Financing transaction and our concerns that the structuring of this transaction was completed without legal counsel, due to our involvement in the BMO Financing only commencing once the deal had been finalized. Ben questioned why so much documentation was necessary, to which Chad reiterated that a \$145,000,000.00 mortgage and security necessitates extensive paperwork to capture all of the nuances that come with such a substantial financing package. ...

...

49. Prior to Chad's departure from the meeting, we discussed the legal fees and whether the HBCH Clients were comfortable with our proposal. Chad noted the extensive risk we as the HBCH Clients' counsel are taking on in leading and closing this transaction and how risk as well as time and effort spent, and other factors, determine the legal fees to be paid. Additionally, it was noted to Leonard and Ben that our proposed rate was, in our view, below comparable rates of firms doing the same work ... As noted above, in my email to Leonard on June 17, 2025, the Firm's original position of fees was "set at 0.75% of the \$145,000,000.00 loan ..." Leonard and Ben both expressed, as part of the fee negotiation, that the amount was high, and they suggested it would be more reasonable for legal fees to be calculated only on the amount being advanced (i.e., the \$97,950,000.00), not the full amount ... The Firm accepted the HBCH Clients' counter-proposal regarding the fees, and the legal fees for the BMO Financing were thereafter set at 0.75% of the \$97,950,000.00 ...

[Emphasis in original]

[51] As was the case with the evidence regarding the fairness of the Veripath

retainer agreement, the law firm's evidence in this regard is uncontroverted. While Leonard Wollman has provided his recollection as quoted above, the evidence of Ms. Pasloski and Mr. Eggerman was provided in response, with a specific description of the key exchange. In his reply affidavit Leonard Wollman does not dispute Ms. Pasloski's detailed evidence or Mr. Eggerman's evidence as above. Ben Wollman has not filed an affidavit in reply, and so he also has not disputed Ms. Pasloski's or Mr. Eggerman's recollection of what occurred.

[52] Of particular significance is the change in the proposed fee, by applying 0.75% to the amount being advanced at closing rather than to the full amount of the loan. In response to the law firm's proposal of calculating 0.75% on the full amount of the loan the applicants, with the goal of reducing the amount of the fee, offered the counter-proposal of calculating 0.75% on only the amount being advanced at closing. The law firm accepted that counter-proposal. With that offer and acceptance the applicants had achieved a saving of over a quarter-million dollars by persuading the law firm to accept the lesser amount for a fee.

[53] This circumstance demonstrates, subject to the matter of the alleged misrepresentation, that the applicants understood the amount being proposed for the fee, and how it was to be calculated.

2. Alleged misrepresentations

[54] As I have said, the applicants allege that the BMO retainer agreement is not fair because they agreed to the rate of 0.75% on the basis of the law firm's misrepresentations. Those alleged misrepresentations, as in the context of the Veripath retainer agreement, are that:

- (a) the fee in the amount of 0.75% of the amount being advanced at closing was a discount; and

- (b) other law firms would charge 3% of the amount being advanced at closing.

[55] I repeat my observation that there is no dispute that the law firm characterized the rate of 0.75% as a discount. I repeat my conclusion that Leonard Wollman and Ben Wollman likely understood the law firm to be stating that some other firms would charge 3%.

[56] In any event, in my discussion of the fairness of the Veripath retainer agreement I referred to the requirement that a misrepresentation be established to be untrue, inaccurate, or misleading. I repeat that discussion here. The evidence that is before me does not establish either that the “discount” representation was untrue, inaccurate or misleading, or that the reference to other firms charging 3% was untrue, inaccurate or misleading.

[57] It is not established that the applicants’ understanding and appreciation of the BMO retainer agreement was based on a misrepresentation from the law firm.

3. Conclusion as to whether the BMO retainer agreement is fair

[58] The applicants fully understood and appreciated the BMO retainer agreement. It was brought about in a fair and timely manner. That being the case, the BMO retainer agreement is fair.

G. Whether the Veripath retainer agreement is reasonable

[59] As Justice Wilkinson said in *Zipchen* at para 29(3):

... “reasonable” relates to the amount payable to the solicitor, the actual work done relative to the work anticipated at the time of the agreement, the risk undertaken, and the particular circumstances of the case, however, some deference should be shown to contingency agreements recognizing that they may assist impecunious litigants to obtain the services of a lawyer.

1. Mr. Eggerman's evidence

[60] On the subject of the reasonableness of the fees on both the Veripath sale and the BMO financing, the law firm directs me to the affidavit of Mr. Eggerman. In this regard Mr. Eggerman refers to his experience in commercial transactions, and he relates his conclusions as to how law firms charge for their work on such transactions. The law firm characterizes this evidence as the kind of evidence that was described by Justice Gerein in *Kamtech Services Inc. v Cargill Canada Ltd.*, 2010 SKQB 231 at para 15:

[15] ... It will frequently happen that a witness or an affiant personally knows something. The knowledge may have been acquired through observing, hearing, feeling or examining. Such an individual is entitled to state what he saw, heard, felt, examined or learned as a result of the examination. The assertions in the affidavits which are so described are generally of this sort and are therefore admissible.

[61] The law firm asserts that Mr. Eggerman's evidence fits within Justice Gerein's description of admissible evidence, in that Mr. Eggerman "personally knows" the information that forms the basis for his conclusions, having acquired that knowledge "through observing, hearing, feeling, or examining" how legal fees are determined in the course of his career. In fact, in asserting that Mr. Eggerman's conclusions are admissible, the law firm is asserting that his *opinion* is admissible. His evidence in this context is not a recounting of something that he has observed. Rather, his evidence is a statement of the opinion that he has formed, based on his experience.

[62] On the topic of the reasonableness of the fees, Mr. Eggerman's evidence does not fall within Justice Gerein's description. Mr. Eggerman's opinion relates to a specialized area that is outside the realm of common experience. It truly is a matter of opinion.

[63] Mr. Eggerman's opinion evidence is not admissible, because he is a party

to these proceedings and so he lacks the requisite independence from the proceedings to provide an admissible opinion. Furthermore, the law firm appropriately has not tendered Mr. Eggerman's evidence as opinion evidence.

[64] Accordingly, in considering the reasonableness of the fees on both transactions I do not consider Mr. Eggerman's opinion regarding how other firms have charged fees.

2. Reasonableness of the fee on the Veripath sale

[65] The fee charged on the Veripath sale was \$93,750.00, being 0.75% of the purchase price. \$93,750.00 was far in excess of any fee that had been charged by the law firm to the applicants on previous transactions. On the other hand, with a purchase price of \$12,500,000.00 the Veripath sale was of a greater order of magnitude than any previous transaction.

[66] While the Veripath retainer agreement includes no specifics as to the work that was anticipated to be performed, the applicants were aware of the extensive work that was to be performed. In summary, they knew that the transaction involved the sale of 24 quarter-sections of land. They knew that the applicants had not yet obtained ownership of some of that land, so that the Veripath sale involved obtaining title to that additional land. They knew that the Veripath sale was part of a larger plan that included implementing new BMO financing in the amount of \$145 million and accommodation of their institution of a new colony in the province. They knew that a tight timeline had been set for the Veripath sale to be completed.

[67] The evidence establishes that this work in fact was done, with the Veripath sale closing in early June 2025, with the required title transfers and discharges having been effected, and with the sale proceeds having been distributed as required. Ms. Pasloski provides this partial description of the work that was involved in the sale:

28. It is worth noting that the transactions associated with the HBCH Clients, including a land swap deal with Ringdal farms, the Veripath Sale, and the BMO Financing, were all provided to our Firm on a last-minute basis requiring the Firm to create a new team to properly resource this very significant amount of work and proceed with these transactions in an expedient manner under extremely tight deadlines imposed by others and to the exclusion of other client work, while the deals were actively in motion and exacerbating the existing risks, including:
- a. ... the land being swapped [in the Ringdal transaction] was to be part of the lands sold in the Veripath Sale ... Leonard and Ben came to the Firm with a sale of lands they did not yet own and did not advise our Firm of this interconnection while both transactions were occurring simultaneously ...
 - b. ... only once the Firm started receiving the financing documents from BMO on May 21, 2025 did we realized the proceeds of sale for the Veripath Sale were a condition to the BMO Financing, which Leonard and Ben failed to disclose;
 - c. The BMO Financing itself was completely planned, negotiated, and agreed to prior to the documentation arriving at the Firm in the midst of the Veripath Sale, with our office catching up on the terms as already agreed. Upon delivery, BMO's counsel had already set a target funding date for June 2, 2025, which would be before the Veripath Sale possession date on June 5, 2025 and thus, the condition of the Veripath Sale proceeds going towards the payouts would not be able to occur until the sale closed, payouts were completed, and monies became releasable.

[68] At para. 11 of his affidavit, Mr. Eggerman referred to the risk that was undertaken by the law firm in agreeing to do the work for the applicants on the two transactions. One such risk that he identified, applicable to the Veripath sale, is:

- f. **No Advance Deposit:** Procido did not require an upfront deposit or other form of retainer, opting instead to share the risk with the HBCH Clients and receive payment only upon or after closing of the transaction ...

[69] In arguing that the fee is not reasonable, the applicants point to some invoices and accounts that the law firm provided to them in the course of the applicants' inquiries about the fees on the two transactions (after completion of the transactions). Based on the lawyer time shown in these documents, while not accepting the time entries in these records as accurate the applicants calculate that the fee of \$93,750.00 works out to an hourly rate of \$2,300 to \$2,500. On its face, say the applicants, such an hourly rate is unreasonable.

[70] At the hearing of this application counsel for the law firm advised that the records to which the applicants refer are not complete records of the time that the lawyers spent on the transactions, and he advised that those documents had not been provided to the applicants as a detailed record of the time spent by the firm's lawyers. He further advised that, at the time of the hearing, work by the firm in connection with the transactions continued to be performed by the firm. He suggested that, if the court should decide that a *quantum meruit* assessment is appropriate, the law firm should be given an opportunity to provide a complete record of time spent.

[71] Counsel so advised as an officer of the court, and therefore I accept the statement that the records to which the applicants refer do not provide a full picture of the time spent on the Veripath sale. Before I would rely on a calculation of hourly rates, in the course of assessing reasonableness, I would need to be certain that I had accurate data to work with. For this reason the time records referred to by the applicants do not assist me in considering the reasonableness of the fees in either transaction.

[72] I accept the law firm's suggestion that the larger a transaction is (with more quarter-sections to be dealt with), the more complex it is – indicating the need for a greater amount of legal work and supporting the reasonableness of a larger fee.

[73] That was the circumstance here. The amount of the fee, the extensive work that was anticipated to be done, the extensive work that was done by the law firm,

the risk to the law firm and the overall circumstances support the conclusion that the Veripath retainer agreement is reasonable. The greater dollar amount of the fee accords with the larger transaction, in terms of both dollars and property dealt with. The applicants were aware, when they agreed to the fee amount, of the extensive work that was anticipated to be performed. That work was performed. The circumstances included a tight timeframe, with the transaction to be brought to completion in concert with other transactions, including the sale of land that had yet to be acquired, and including the much larger BMO financing transaction.

[74] The Veripath retainer agreement is reasonable.

H. Conclusion as to the Veripath retainer agreement

[75] The Veripath retainer agreement is both fair and reasonable. Accordingly the application, as it relates to the Veripath retainer agreement and the Veripath account, is dismissed.

I. Whether the BMO retainer agreement is reasonable

1. Mr. Eggerman's evidence

[76] As I have discussed, on the subject of the reasonableness of the fees the law firm directs me to the affidavit of Mr. Eggerman. For the reasons that I have explained, I do not consider Mr. Eggerman's opinion evidence in determining the issue of the reasonableness of the fees on the BMO financing.

2. Michael Fulton's evidence

[77] On the subject of the reasonableness of the fees on the BMO financing, the applicants direct me to the evidence of Michael Fulton, who is a senior relationship manager with BMO. On BMO's behalf he was involved in the BMO refinancing.

[78] Mr. Fulton's affidavit contains three categories of evidence:

- (i) recitation of his discussions with the applicants, after the BMO financing closed, about the reasonableness of the law firm's fees on the BMO financing;
- (ii) information as to how lawyers have charged their clients in other transactions; and
- (iii) the fees that BMO paid to its own lawyer in connection with the BMO financing.

[79] Mr. Fulton's discussions with the applicants about the law firm's fees are not relevant to the issues that are before me. Aside from the circumstance that this part of the affidavit includes Mr. Fulton's opinion about the law firm's fee (without his having been tendered or qualified to express an opinion), the discussions between Mr. Fulton and the applicants have no bearing on my determinations here. Consequently I disregard Mr. Fulton's evidence of his discussions with the applicants about the law firm's fees.

[80] The second category of Mr. Fulton's evidence is information as to how lawyers have charged their clients in other transactions. In this category Mr. Fulton refers to five transactions that he has "seen" in the recent past. For each of these transactions he sets out:

- (a) an amount that was being financed or the price of a land purchase being effected;
- (b) his understanding of the fee billed by a lawyer to the borrower or to the purchaser;

- (c) the number of borrowers or purchasers involved in the transaction;
and
- (d) his general description of his understanding of the work that was performed by the borrower's lawyer or the purchaser's lawyer.

[81] Of the financing transactions referred to by Mr. Fulton, one involved financing of about \$31 million and the other involved about \$9 million. Of the land purchase transactions, one purchase price was \$1.5 million and the other two purchase prices were less than \$1 million.

[82] Mr. Fulton's evidence is not tendered as opinion evidence. Accordingly, any opinion that is expressed by Mr. Fulton in the affidavit (whether directly or indirectly) is not relevant and I disregard it.

[83] Mr. Fulton's evidence is tendered as factual evidence. Of course, the applicants have filed his evidence so that I will compare the lawyer fees referred to by Mr. Fulton to the fee that was charged by the law firm here on the BMO financing. His evidence as to other transactions, presumably involving parties other than the applicants and presumably involving lawyers other than the Procido law firm, is hearsay evidence, however. Since he was neither the lawyer nor the client in the transactions, he does not have personal knowledge of the work that was done by those lawyers and he does not have personal knowledge of the fee that was charged and paid in each transaction.

[84] If this application is a final application, such hearsay evidence is not admissible. If this application is an interlocutory application, such hearsay information can be admissible only if Mr. Fulton provides it on an "information and belief" basis, which requires his identifying the source of the information. He has not done so. He has not identified the source of his information about each of the five transactions to which he refers.

[85] Giving Mr. Fulton's affidavit the most liberal interpretation, I might infer that he has "seen" the transactions in the course of his work with BMO, and that he has drawn the information cited by him from BMO files. Even if I were to make that inference, though, I still am faced with uncertainty as to the reliability of his information regarding the work performed by the lawyers and regarding the fees billed by them. The BMO files may contain certain information, but whether that information represents what actually happened is not known to me from the material that is before me.

[86] Since Mr. Fulton's evidence as to other transactions is inadmissible hearsay, I disregard that evidence.

[87] The third category of Mr. Fulton's affidavit is his reference to the fees that BMO paid to its own lawyer in connection with the BMO financing. This information, too, is not relevant. BMO's lawyer was acting for the lender bank. The Procido law firm was acting for the borrower. On the face of it, they will have had different duties and tasks to perform. There is no basis in the evidence on which I can compare the work and the fee of BMO's lawyer with the work and the fee of the law firm. For this reason I disregard the third category of Mr. Fulton's affidavit.

[88] In the end, then, I disregard the entirety of Mr. Fulton's affidavit.

3. Reasonableness of the fee on the BMO financing

[89] The fee charged on the BMO financing was \$734,625.00, being 0.75% of the amount being advanced at closing. Even more so than was the case with the fee on the Veripath sale, this fee was far in excess of any fee that had been charged by the law firm to the applicants on previous transactions. On the other hand, with a loan amount of \$145 million the BMO financing was of a greater order of magnitude than any previous transaction.

[90] The applicants anticipated that extensive work would be performed by the law firm on the BMO financing. This is demonstrated in the evidence of Ms. Pasloski at paras. 40, 44 and 49 (set out above at paras. 47 and 50).

[91] That extensive work was carried out by the law firm. The BMO financing transaction closed, with the bank advancing \$97,950,000.00 as planned. Ms. Pasloski touched on the extent of the work in her affidavit at para. 28 (set out above at para. 67), and at para. 43:

43. ... I will point out the sheer volume of documents that need to be drafted, revised, and signed for the BMO Financing, which included over 800 pages of documents, 93 documents to be signed, and 99 documents to be submitted back to Miller Thomson (counsel for BMO), not inclusive of the **245 titles** subject to the \$145,000,000.00 financing arrangement. This was not a simple transaction; it was very complex and required significant time to complete. This was a \$145,000,000.00 financing arrangement with many moving parts, land acquisitions, stringent and numerous reporting and compliance conditions, mortgages to pay out, interests to register and discharge, etc...

[Emphasis in original]

[92] As to risk that was involved in the transaction, in his affidavit at para. 11 Mr. Eggerman has identified the risks to the firm that he had in mind when negotiating the fee on the BMO financing, including the following:

...

- a. **Transaction Structure:** The Firm did not structure the BMO Financial transaction which means that the Firm and lawyers must follow a process and structure defined entirely by someone else. This is always a significantly riskier position for a lawyer and law firm to be in because the roadmap through the transaction is not known and more importantly the rationale and reasons for structuring a transaction in a certain way are unknown. ...

- b. **Liability Exposure:** A \$145,000,000.00 financing carries significant risk of claims against the lawyer and firm. With large and complex transactions such as this one, there is also a higher likelihood that the lawyer and firm will be embroiled in third-party litigation. With such a large transaction there are also significant reputational risks if the transaction does not close...

...

- f. **No Advance Deposit:** Procido did not require an upfront deposit or other form of retainer, opting instead to share the risk with the HBCH Clients and receive payment only upon or after closing of the transaction. ...
- g. **Carrying of Expenses:** The Firm has not been paid for any work [on the BMO financing] ... and is effectively acting as a lender to the HBCH Clients ... This is a risk that Procido took on by agreeing to a percentage of total transaction value ...

...

- i. **Scope Creep:** Often large transactions such as the BMO Financing entail protracted and unanticipated negotiation, unexpected additional diligence and multiple amendment, and additional documentation. ...

[Emphasis in original]

[93] I repeat my acceptance of the suggestion that the larger a transaction is (with a substantial loan amount and associated documentation and security to be put in place), the more complex it is – indicating the need for a greater amount of legal work and supporting the reasonableness of a larger fee.

[94] That was the case with the BMO Financing. The amount of the fee, the extensive work that was anticipated to be done, the extensive work that was done by the law firm, the risk to the law firm and the overall circumstances support the conclusion that the BMO retainer agreement is reasonable. The greater fee dollar amount accords with the larger transaction. The applicants were aware, when they agreed to the fee amount, of the extensive work that was anticipated to be performed.

In fact that work was performed.

[95] The BMO retainer agreement is reasonable.

J. Conclusion as to the BMO retainer agreement

[96] The BMO retainer agreement is both fair and reasonable. Accordingly the application, as it relates to the BMO retainer agreement and the BMO account, is dismissed.

K. Costs

[97] At the hearing of this application counsel for the law firm advised that the law firm does not seek costs of this application. In that light, I direct that each party will bear its, her or his own costs of this application.

L. Conclusion

[98] Both the Veripath retainer agreement and the BMO retainer agreement are fair and reasonable. Accordingly the application is dismissed, each party bearing its, her or his own costs.

"G.M. Currie" J.
G.M. CURRIE