

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT MONTREAL
OF

No.: 500-17-106548-194

DATE: March 6, 2025

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Y HONOURABLE**

SÉBASTIEN VAILLANCOURT, J.S.C.

GOLDWATER, DUBÉ INC.
Plaintiff, Cross-Defendant
vs.
D. P.
Defendant, Cross-Plaintiff

CORRECTED JUDGMENT

**SEALING ORDER: All judgments and proceedings produced as exhibits and concerning the defendant's divorce file and the files of the Youth Division of the Court of Quebec concerning her children are hereby sealed.
In addition, the Court orders anyone who has access to this judgment not to disclose or disseminate any information that could identify the defendant's children.**

[1] The plaintiff (hereinafter also referred to as the "Firm" or "Goldwater Dubé") is claiming from the defendant the sum of \$177,639.31 for unpaid professional fees. The

defendant contests the claim and claims reimbursement from the plaintiff of \$100,000, as well as compensatory and punitive damages totalling \$150,000. By way of an amendment authorized at the hearing¹, the plaintiff is asking the Court to declare the cross-application to be abusive.

[2] For the following reasons, the Court concludes that the plaintiff is entitled to the amount claimed. The cross-application is dismissed, but it is not declared abusive.

PRELIMINARY REMARKS

[3] It should be noted that the present proceedings were suspended by judgment dated November 3, 2021, until final judgment was rendered in the defendant's divorce case. The divorce was granted on September 16, 2022¹, but the defendant appealed the judgment, and the appeal was dismissed on December 16, 2022.² Finally, the Supreme Court dismissed the defendant's application for leave to appeal on May 11, 2023.³

[4] This explains why the file did not progress between November 3, 2021, and May 2023.

* * * * *

[5] During the hearing, the defendant asked the Court to have most of the documents sealed on the grounds that they concerned her children, to which the plaintiff objected. The objection was then taken under advisement, and the Court indicated that it would be decided in the final judgment, while requesting the defendant to provide it, with a copy to the plaintiff, with a list of the specific items she wished to be sealed.

[6] The defendant did not provide the list of exhibits in question before the case was taken under advisement and only after that did she write to the Court to provide it with the list. The plaintiff objected to this course of action, arguing that the defendant's request was late and that it was no longer able to respond. The plaintiff also added that the defendant was attempting to introduce new elements into the evidence.

[7] By letter dated September 17, 2024, the Court dismissed the defendant's request on the grounds that it was indeed untimely and contained unauthorized pleadings on the merits of the dispute which also referred to factual elements that had not been put in evidence at the hearing.⁴

[8] The Court points out, however, that the confidentiality orders set out above are sufficient to preserve the anonymity and interests of the defendant's minor children.

¹ Minutes of September 12, 2024, at 12:27 p.m.

¹ Exhibit P-78.

² Exhibit P-79. To be precise, the Court of Appeal dismissed the motion for leave to appeal with respect to the finding in the divorce judgment that the defense and cross-application were abusive and granted the motion to dismiss the appeal with respect to the other findings.

³ Exhibit P-80.

⁴ Correspondence exchanged on this subject is filed under T-1.

CONTEXT

[9] The defendant consulted the plaintiff firm in November 2015 regarding the custody of her children. The Firm then represented her for approximately three years, both before this Court in connection with a divorce application eventually filed by her then husband, and before the Youth Division of the Court of Quebec (herein after referred to as the "Youth Division") in proceedings concerning the couple's two children.

[10] Over the course of its mandate, the Firm received a total of just under \$130,000 in professional fees. Of this amount, \$70,000 was received from the defendant's ex-husband following two judgments of this Court rendered during their divorce proceedings. The first homologated a consent agreement signed by the parties under which he undertook to pay the defendant a provision for costs of \$30,000 in September 2016, while the second ordered him to pay a sum of \$40,000 "à titre d'avance sur le partage du patrimoine familial, somme globale ou autre sommes (sic) à déterminer comme conséquence de dissolution du mariage par le juge du fond".¹ The defendant herself paid the difference to the Firm.

[11] The introductory application was filed in February 2019, a few months after the end of the Firm's mandate. It claimed the sum of \$396,334.22.

[12] In October 2022, the plaintiff seized before judgment the sum of \$210,907.37 held in trust by a notary and intended for the defendant as per the divorce judgment pronounced on September 16, 2022.²

[13] The defendant filed an application to quash this seizure before judgment, but it was referred to the trial judge by Justice Chantal Tremblay on December 13, 2022. It is important to note that no representation was made during the trial presided over by the undersigned with regard to this application.

[14] In addition, the sum held in trust by the notary was the subject of another seizure before judgment made by another law firm (hereinafter the "Second Firm"), which had also represented the defendant and had obtained judgment against her for unpaid professional fees³.

[15] An agreement between the plaintiff and the Second Firm enabled the latter to be paid a portion of the amounts due to it by defendant from the money held in trust by the notary. Thus, the balance of the amount still seized amounts to \$177,639.31. At the hearing, Me Goldwater explained that she had no hope of recovering more than this amount given the defendant's financial situation. She therefore reduced her claim to this amount.⁴

[16] Finally, it was explained to the Court that the notary who held in trust the seized funds had retired and that it was then agreed that the sums she held in trust and which

¹ Exhibit P-75. In the divorce judgment, this sum was ultimately qualified as a provision for costs (P-78, par. 292).

² Exhibit P-78.

³ Exhibit P-83.

⁴ The amendment was authorized at the hearing, see minutes of September 12, 2024, at 10:43.

were the subject of the seizure would be deposited into the plaintiff's trust account pending the present judgment.

Defence and cross-application

[17] The defendant is self-represented, and her means of defence are somewhat scattered. By order of Justice Yves Poirier rendered on May 9, 2019, the defendant's proceedings dated February 21, 2018, April 8, 2019¹ and May 6, 2019, are to be considered as her written defence. However, the defendant subsequently filed a cross-application on May 21, 2021, and an amended defence and cross-application on August 5, 2024.

[18] The Court notes that the defendant's list of criticisms of the services rendered by the Firm, and more particularly by Me Goldwater herself, is long. The Court summarizes them as follows:

- a) The defendant could not afford to pay the Firm's fees, and she made this clear to the Firm's lawyers at the very first meeting.
- b) She was in a fragile psychological state, faced with a multimillionaire husband who had been the perpetrator of domestic violence against her.
- c) She was therefore vulnerable, and Me Goldwater did not comply with her ethical obligations under the circumstances.
- d) Me Goldwater and other lawyers of the Firm reassured her that her husband would be responsible for paying their professional fees.
- e) It was on the strength of these reassuring comments that she signed the fee agreements.
- f) Me Goldwater did not keep her informed of developments in her files.
- g) The Firm did not provide her with a realistic estimate of foreseeable fees.
- h) The professional fees are exaggerated and out of proportion, particularly considering the results obtained.
- i) She was poorly represented by the Firm.

[19] For these reasons, the defendant contests the plaintiff's application and claims the sum of \$100,000, which she considers to have been overpaid. She is also claiming damages of \$100,000 for the moral prejudice she suffered because of the professional misconduct of Me Goldwater and the Firm, as well as punitive damages of \$50,000.

ISSUES IN DISPUTE

[20] The Court is called upon to answer the following questions:

- a) Is the Firm entitled to the professional fees claimed?

¹ The minutes incorrectly state 2018.

- b) Is the defendant entitled to reimbursement of \$100,000?
- c) Has Me Goldwater – or any other lawyers of the Firm – engaged her professional liability?
- d) If so, has this fault caused prejudice to the defendant?
- e) Is the defendant entitled to compensatory damages of \$100,000?
- f) Is the defendant entitled to \$50,000 in punitive damages?
- g) Is the amended cross-application abusive?

OBJECTIONS TAKEN UNDER ADVISEMENT

[21] Two objections were taken under advisement at the hearing. They must now be disposed of.

[22] The first concerns the filing of exhibit DDP-12, which consists of statements of fees billed to the defendant's ex-husband. The plaintiff objects on the grounds that the exhibit is incomplete and irrelevant.

[23] On the one hand, the Court does not know how the defendant obtained these documents. However, the professional secrecy that the ex-husband benefits from is at stake, and the Court, which must raise it of its own motion, does not know whether he waived it or not. Furthermore, in the absence of testimonial evidence regarding this exhibit, the Court does not know whether all the statements of account sent to the defendant's ex-husband have been produced.

[24] In these circumstances, the objection is sustained.

[25] The other objection concerns the production of exhibit DDP-322, which contains exchanges between defendant's ex-husband and the tax authorities concerning his notices of opposition, an agreement reached between them and a claim by the tax authorities. The plaintiff objects to the filing of this exhibit on the grounds that it is irrelevant.

[26] The objection is sustained. These documents are not relevant to the present dispute.

ANALYSIS AND DECISION

Is the Firm entitled to the professional fees claimed?

Legal principles

[27] When it comes to lawyers' professional fees, the contract – often in the form of a fee agreement – between the parties is of course highly relevant. However, in addition to what is stipulated in the contract, the lawyer is also obliged to charge fees that are fair, reasonable and justified.¹

¹ Art. 101 of the *Code of Professional Conduct of Lawyers*, CQLR, c. B-1, r. 3.1.

[28] The *Code of Professional Conduct for Lawyers* can be used as a guide to determine whether fees are fair and reasonable:

102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.

[29] Before agreeing to provide professional services, the lawyer must also ensure that the client has all relevant information on the financial terms of their agreement and must keep the client informed of any circumstances that could result in significant changes to the anticipated costs of the professional services.²

[30] The lawyer must also provide the client with the necessary explanations to enable him to understand the amount of his fees and the terms of payment.³

[31] On the other hand, "oath of the advocate shall make proof as to his services having been required and as to the nature, duration and value thereof, but such oath may be contradicted in the same way as any other testimony."⁴

[32] Justice Guy Gagnon, j.c.a. sitting alone, wrote that this provision of the *Code of Professional Conduct of Lawyers* creates "une présomption simple qui, si elle n'est pas repoussée par une preuve contraire, est suffisante pour établir la justesse de l'effort déployé par l'avocat au soutien de la défense des intérêts de son client."⁵ Justice Gagnon continues:

[24] En l'absence d'une preuve contradictoire tendant à démontrer le caractère exagéré du nombre d'heures consacrées par un avocat à une affaire donnée et à moins que la liste des heures chargées révèle à sa face même des

² *Id.*, art. 99.

³ *Id.*, art. 100.

⁴ Art. 127 of the *Act respecting the Barreau du Québec*, CQLR, c. B-1.

⁵ *Consortium Promecan inc. (Syndic de)*, 2011 QCCA 1031, par. 22.

anomalies appuyant son caractère déraisonnable, je suis d'avis, outre ces circonstances, que l'on peut difficilement remettre en question l'affirmation d'un avocat quant à la pertinence des heures qu'il a consacrées à une affaire donnée considérant les règles déontologiques qui gouvernent sa conduite en cette matière.

[33] Since one of the defendant's arguments is the poor quality of the services rendered, it should be remembered that the lawyer's obligation is one of means. Thus, if the lawyer has complied with this obligation of means, he cannot be held responsible for the fact that the expected result was not obtained.⁶

[34] It should also be recalled that the lawyer's standard of conduct is that of the competent, prudent and diligent lawyer.⁷

Application of the principles

[35] The amount initially claimed by the Firm, added to what it had already received, would certainly have raised questions, since we're talking about a sum of almost \$525,000 over a three-year period. While this sum seems striking, it is not impossible that it could have been justified, particularly given the complexity of the case (parenting time, the presence of domestic violence, the existence of two expert reports concluding that the defendant was behaving in an alienating manner, involvement of DYP, defendant's repeated refusals to participate to a settlement conference despite Me Goldwater's recommendation to, complex financial situation of the husband, annulment of the marriage contract sought by defendant, spousal support, division of the family patrimony, multiple proceedings in the Superior Court and the Youth Division) and the fact that the defendant repeatedly called on her lawyers.

[36] However, given that the amended claim now amounts to just under \$178,000, it is not necessary to review the original claim, and it is only the legitimacy of this \$178,000 claim, added to the sum already collected of approximately \$130,000, that will be examined.

[37] That said, the question arises as to whether the defendant succeeded in rebutting the presumption that the Firm made a fair effort to defend her interests

[38] On the one hand, the defendant signed a fee agreement for each of the years during which the Firm rendered services to her.¹ They show that Me Goldwater's hourly rate was \$625 in 2015, \$660 in 2016, \$700 in 2017 and \$735 in 2018. The evidence also reveals that Me Goldwater was admitted to the Bar in 1981, so she had some 34 years' experience at the start of the mandate.

[39] The defendant invoked article 28 of the *Code of Professional Conduct of Lawyers* and pleaded that she signed these fee agreements in a state of fragility and

⁶ Beaudoin Jean-Louis, Deslauriers Patrice and Benoît Moore, *La responsabilité civile*, volume 2, 8^e édition, Éd. Yvon Blais, 2014, par. 2-126, p.145.

⁷ *Harris (Succession de)*, 2016 QCCA 50, par. 16 (application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2016-06-09) 36903).

¹ Exhibits P-2 and P-89.

vulnerability and because she had been reassured by Me Goldwater and other lawyers in the Firm that her husband would ultimately be responsible for their fees.

[40] This provision reads as follows:

28. A lawyer must determine together with the client the terms, conditions and scope of the mandate given to him. In particular, he must set out in an objective manner the nature and scope of the problems as he sees them on the basis of the facts brought to his attention and the risks inherent in the measures recommended.

A lawyer must obtain the client's consent to the mandate, paying particular attention and care when the client is vulnerable due, in particular, to his age or his physical or psychological condition.

[41] These arguments cannot be accepted. Although it is not disputed that the defendant was a victim of conjugal violence, which was in fact recognized by the courts, the evidence does not allow the Court to conclude that the defendant's capacity to consent in a free and enlightened manner was affected. Moreover, she signed four fee agreements in three years.² To accept her argument, the Court would have to conclude that she was incapable of giving free and enlightened consent on each of these occasions, which the evidence does not support.

[42] Moreover, the testimony of Me Goldwater and Me Carin, employed by the Firm at the time it represented defendant, convinces the Court that they believed the defendant when she told them she was a victim of domestic violence, and that they were sensitive to the situation. There is therefore no evidence that they failed to pay particular attention and care to her vulnerability due to her psychological state, as required by article 28 of the *Code of Professional Conduct of Lawyers*. Thus, no fault was committed when the Firm's lawyers had the defendant sign the fee agreements.

[43] The defendant maintained that when she retained the Firm's services, she informed the lawyers, at the very first meeting, that she could not afford to pay their fees, and that the Firm's lawyers assured her that her husband would ultimately be responsible for their fees, which is denied by both Me Goldwater and Me Carin.

[44] After hearing the testimonial evidence, the Court concludes that the lawyers explained to the defendant that they would submit a request for provision for costs on her behalf, so that her husband would most likely pay at least part of their fees, but it does not find that they guaranteed or assured her that he would be entirely responsible for their fees. Moreover, if they had done so, why would the defendant have agreed to pay approximately \$55,000 she paid them herself?

[45] As for the defendant's argument that she had told the lawyers that she could not afford to pay their fees, the Court concludes that the matter was obviously discussed, without, however, any agreement to the effect that she would not have to pay anything because of her financial situation. If this had been the case, why would she have signed

² She signed two at the beginning of her mandate, as the calendar year was ending.

the fee agreements in the first place? And why, again, would she have agreed to pay a total of \$55,000 herself?

[46] The defendant complained that she was not informed of the progress of her case. However, the thousands of e-mails exchanged between the lawyers and the defendant³, many of which have been produced⁴, convince the Court that she was informed of the progress of her divorce case before the Superior Court and her children's cases before the Court of Quebec, Youth Division. The evidence further allows the Court to conclude that, in addition to being informed, the defendant played an active role in the conduct of her cases.

[47] The defendant also complained that the Firm did not provide her with an estimate of foreseeable fees and that she was not informed of their evolution.

[48] The defendant received monthly invoices⁵ for the duration of the Firm's mandate, which allowed her to easily follow the evolution of the fees. Her argument is so contrary to the evidence that it casts doubt on her credibility.

[49] However, Me Goldwater and Me Carin acknowledged that they had not provided the defendant, at the beginning of the mandate, with an evaluation of the foreseeable fees. Both explained that it is impossible to make such an assessment in family and youth protection matters, when the situation can evolve in a completely unpredictable way, depending in particular on the sometimes equally unpredictable reactions of the opposing party.

[50] In an ideal world, it would obviously be preferable for clients to be able to obtain an estimate of the foreseeable costs of their case. That they knew what they were getting into and could budget for the cost of the proceedings and the trial ahead. But it's true that in family matters, and probably even more so when parental time in respect of minor children is at stake, such an assessment of foreseeable fees is difficult to establish and could even, in most cases, be quite risky or foolhardy. This is also true in the field of youth protection, where the behavior of a third party (the Director of Youth Protection) can also be difficult to predict and may itself be dictated by the events that will affect the children, which may themselves be unpredictable.

[51] In family and youth protection cases, parents are often emotional, and emotions can run high. Unfortunately, it's not uncommon for them to make decisions based on emotion, and even to be unreasonable. For some, the dust settles, and they become reasonable again, limiting the cost of legal proceedings. But for others, there are no limits, and their decisions are dictated by their emotions rather than reason, for the duration of the proceedings and sometimes even longer.

[52] In these circumstances, it is often difficult for a lawyer to predict in advance the reaction of the opposing party (and even of his own client) and, consequently, to estimate the foreseeable amount of his fees. Even if it were possible to anticipate the

³ According to the uncontradicted testimony of Me Goldwater.

⁴ Exhibits P-15 to P-55, P-91 and P-92.

⁵ Exhibits P-1, P-91 and P-93.

reaction of the opposing party, unforeseen circumstances often arise during the course of the proceedings. The lives of people who separate often evolve rapidly after separation, and changes in the lives of both parents and children often have an impact on the proceedings.

[53] In such a context, the Court understands that it is difficult for a lawyer to give, at the beginning of a mandate, an estimate of foreseeable fees in family and youth protection matters. On the other hand, it is in such a situation that it is imperative for the lawyer to keep the client regularly informed of the evolution of fees.

[54] In the case at bar, the reasons given by Me Goldwater and Me Carin for not providing the defendant with an estimate of foreseeable professional fees satisfy the Court. Moreover, the fact that the defendant was informed of the evolution of fees by the transmission of a monthly account also satisfies the Court that the Firm has respected its obligations.

[55] The defendant contended that the Firm billed exaggerated fees as several lawyers rendered different services, not all of which were required. She added that the fees are exaggerated because the services are counted in multiples of five minutes, so that even services that took less time were billed for five minutes.

[56] On the one hand, a study of the Firm's statements of account does not allow the Court to conclude that the same services were billed more than once or by several lawyers, especially since the Firm no longer claims the full amount billed. In addition, the Court notes from the evidence that Me Goldwater often offered the defendant to have some of the services performed by less experienced lawyers of the Firm to enable her to save money, but that defendant generally asked her to perform most of the services herself, at her higher hourly rate.

[57] Further, the fact that the services are billed in multiples of five minutes does not lead to the conclusion that the fees are exaggerated, since very few, if any, of these services actually lasted less than five minutes.

[58] The defendant added that the fees are exaggerated in light of the results obtained. In particular, she pleaded that because she was poorly represented by the Firm, she lost custody/parenting time of her children.

[59] It is true that the sum claimed combined with the sums already collected by the Firm are substantial. However, the evidence shows that the defendant's files were complex, both before this Court and before the Youth Division. The existence of two reports concluding that she had alienated her children, including one from her own expert, certainly complicated the cases. In addition, the defendant very frequently solicited her lawyers, the numerous e-mails being revealing in this respect. Moreover, Me Goldwater was often concerned about her client's conduct and its consequences on the courts' decisions regarding custody and whether or not the children's security or development was in danger. Numerous e-mails exchanged with defendant demonstrate this.

[60] The Court has no doubt that Me Goldwater and the other lawyers of the Firm spared no effort to support their client and assert her rights. They are certainly not responsible for the results.

[61] The Court can understand the defendant's disappointment at seeing the parenting time allocated to her ex-husband in the divorce judgment. She clearly loves her children very much, and the Court has no doubt that this situation must have been terribly difficult for her. However, this result cannot be attributed to the Firm, which, it should be remembered, owes her an obligation of means, not of result. Here is why.

[62] When the Firm stopped representing the defendant, she still had custody⁶ of the children. However, she was on a very slippery slope, since two experts, including her own, had concluded that she was an alienating parent. She is highly critical of Me Goldwater's choice of expert, Dr. Abe Worenlein, whom she suspects of being her friend. She also criticizes Me Goldwater for covering up for Dr. Worenlein after he produced what she believes to be a completely erroneous report.

[63] Me Goldwater testified that she and Dr. Worenlein have no social relationship. Moreover, she filed an e-mail showing that the defendant was happy with her recommendation regarding the choice of Dr. Worenlein before he produced his report.⁷

[64] Firstly, the defendant's assertion that Me Goldwater and Dr. Worenlein are friends and that she tried to cover for the latter is completely unsupported by the evidence. Secondly, as Dr. Worenlein is fully qualified to act as an expert in this field, Me Goldwater can certainly not be held responsible for the result of the expert's report.

[65] The defendant also criticized Me Goldwater for not having Dr. Worenlein disavowed following his unfavorable report, and for not having accepted an expert opinion from Dr. Peter Jaffe, a psychologist.

[66] Me Goldwater explained that she could not produce a new expert opinion without the Court's authorization, since there had been an agreement with the opposing party that each would produce only one expert opinion. However, she felt that it was strategically unwise to seek the Court's authorization to produce a new expert opinion, which she also felt had little chance of being authorized. In her opinion, there was a great risk that Dr. Jaffe would not conclude in the defendant's favor, which would have been catastrophic since two experts had already concluded that parental alienation was present.

[67] Given Me Goldwater's refusal to retain Dr. Jaffe's services, the defendant decided to meet with him alone. Dr. Jaffe produced a report which, according to Me Goldwater, was a "copier-coller" of defendant's words. According to Me Goldwater, this report could not be used in court, since Dr. Jaffe had not obtained the defendant's husband's version of events.

⁶ In accordance with the vocabulary in force at that time.

⁷ Exhibit P-93, p. 587.

[68] Considering the explanations provided by Mr. Goldwater and taking into account her experience and the fact that the Court must ask itself whether, at the time she made the decisions now called into question by the defendant, she acted as a prudent, reasonable and diligent lawyer, the Court cannot conclude that she improperly represented the defendant.

[69] The defendant also complained that the Firm did not take the appropriate steps to ensure that she obtained alimony for herself and a sufficient provision for costs to enable her to pay her lawyers' professional fees. In response to a question from the Court, she said that Me Goldwater was not "tough enough".

[70] This argument is unfounded. A lawyer from the Firm appeared in court, whether before this Court or before the Youth Division, on some thirty occasions in less than three years to assert the defendant's rights or to defend her against her husband's or the DYP's proceedings. At the defendant's request, Me Goldwater herself was generally present, except on three or four occasions when Me Carin represented her.

[71] It is true that a long time elapsed between the safeguard order of September 30, 2016, which homologated the parties' consent under which the defendant's husband agreed, among other things, to pay her alimony and a provision for costs, and the hearing of the applications for provisional measures in October 2018. However, this delay can be explained by the fact that the first scheduled date for the hearing of the applications for provisional measures, in November 2017, was postponed to January 31 and February 1, 2018, because a hearing was also scheduled in November 2017 in Court of Quebec.⁸ It even appears that Me Goldwater objected to this postponement, but to no avail. In addition, the hearing could not take place on January 31 and February 1, 2018, again due to proceedings in the Youth Court. This is why the hearing only took place in October 2018. In these circumstances, no reproach can be held against the Firm.

[72] The defendant also complained that Me Goldwater seemed more interested in seeing her fees being paid than in representing her interests. She added that she was harassed, in particular by Me Goldwater's son, who was employed at the Firm, when he wrote to her that the professional fees owed to the Firm were more important than what she might owe the bank.⁹

[73] These attacks are completely gratuitous. The Court has no doubt that Me Goldwater and the lawyers of the Firm who worked on the defendant's case put a great deal of effort into representing her properly. It is true that the question of payment of fees often comes up in exchanges between the parties, but the Firm cannot be blamed for this, given the growing amount of unpaid fees. Furthermore, and most importantly, it cannot be concluded that the services rendered to the defendant were affected by the fact that the Firm's fees were not paid, even though the Firm was increasingly insistent on this point. It is worth emphasizing that Me Goldwater continued to represent the

⁸ Exhibit P-75.

⁹ Exhibit DDP-16.

defendant until December 2018, although the last payment of fees dated back to August 2017.

[74] As for the tone of Me Goldwater's son's communication, it is indeed harsh, but that does not mean that it engages the Firm's liability and, above all, this communication, nor any other for that matter, does not constitute harassment as the defendant claims.

[75] While she seemed to be pulling in all directions, the defendant mentioned that she had used her children's money to pay the Firm's fees. Me Goldwater however testified that the defendant told her it was her savings from her family allowance. She categorically affirmed that if the defendant had told her that the money belonged to the children, she would never have accepted it or, at the very least, she would have asked the Court to authorize her client to use the money to pay her fees. There is no reason to question Me Goldwater's testimony.

[76] In view of the foregoing, the plaintiff is entitled to the amount claimed.

Is the defendant entitled to reimbursement of the \$100,000 collected by the plaintiff?

[77] The defendant believes that the Firm's fees exceeded the value of the services rendered and is therefore claiming reimbursement in the amount of \$100,000.

[78] As mentioned above, the Firm is entitled to the amount claimed, in addition to what it has already received. It has devoted a great deal of time to the defendant's case, both before this Court, in the divorce file, and before the Youth Court, and the amount of the fees derives not only from the complexity of the issues (more particularly the one concerning parental alienation), but also from the defendant's own behaviour, which involved communicating on an impressive number of occasions with Me Goldwater or Me Carin. The evidence shows that some 2,000 e-mails were exchanged by the lawyers with the defendant and her ex-husband's lawyer, and the majority of these were with the defendant.

[79] Under these circumstances, the defendant is not entitled to any reimbursement.

Has Me Goldwater or any other lawyer of the Firm engaged their professional liability?

Legal principles

[80] The question is whether the lawyer acted as a prudent and diligent professional would have done in the same circumstances. As mentioned above, the lawyer has an obligation of means, not of result. It is also important to put oneself in the lawyer's shoes at the time the decisions were made and the actions were taken, and not to take advantage of the passage of time and determine whether he or she made a mistake based on what is now known. As the saying goes, there should be no *Monday morning quarterbacking*.

[81] The Supreme Court thus poses the question:

[53] The correct inquiry to be made in assessing whether a professional committed a fault is indeed to ask whether the defendant behaved as would a reasonably prudent and diligent fellow professional in the same circumstances (J.-L. Baudouin and P. Deslauriers, *La responsabilité civile* (5th ed. 1998), at p. 850). To ask, as the principal question in the general inquiry, whether a specific positive act or an instance of omission constitutes a fault is to collapse the inquiry and may confuse the issue. What must be asked is whether that act or omission would be acceptable behaviour for a reasonably prudent and diligent professional in the same circumstances. The erroneous approach runs the risk of focussing on the result rather than the means. Professionals have an obligation of means, not an obligation of result.¹

[Emphasis in original].

Application of the principles

[82] Some of the defendant's criticisms of Me Goldwater and Me Carin have already been dealt with above, and as we have seen, none were held against them.

[83] The defendant's other criticisms are essentially that Me Goldwater was ill-prepared on a few occasions.

[84] The argument is unfounded. The only specific element of the defendant's testimony concerned a hearing held on November 23, 2017, in the Youth Division. According to her, Me Goldwater was obliged to request a recess in order to review an intervention plan submitted at the hearing that she however already had in her possession. The defendant concluded that her lawyer was ill-prepared.

[85] Me Goldwater testified that she did in fact have an intervention plan in her possession, that she had even discussed its contents with the defendant and that she had contacted its author to request its modification. When an intervention plan was submitted at the hearing, she believed it to be a modified one, hence her request for a suspension. It was during the suspension that she realized it was the same intervention plan. She therefore formally denied having been ill-prepared on this occasion.

[86] By providing these explanations, Me Goldwater was credible and convincing. Since the defendant did not provide any other specific examples of Me Goldwater's alleged poor preparation, her argument fails.

[87] The defendant also criticized Me Goldwater for failing to file a defence and cross-application on her behalf within the time limits prescribed in the divorce proceedings, and that as a result, she suffered the wrath of Justice Béliveau in the divorce judgment.

[88] Once again, this argument cannot be accepted. Justice Karen Kear-Jodoin had ordered that the defence and cross-application be filed no later than November 30, 2018, or within three weeks of her judgment on provisional measures, whichever was

¹ *St-Jean v. Mercier*, 2002 SCC 15.

later. The judgment was handed down on December 14, 2018, so that it was three weeks after this date that the deadline expired. However, the Firm ceased representing the defendant before the expiry of this deadline, on December 17, 2018 (the Court notes that Me Goldwater nevertheless represented the defendant the following day at a hearing presided over by Justice Aline U.K. Quach¹). While we may wonder whether it was appropriate for the Firm to cease to represent defendant a little less than three weeks before the expiry of the time limit for filing the defence and cross-application, we can be reassured that the defendant nevertheless had ample time and opportunity to file its proceedings thereafter, since, on the one hand, she was represented at certain times by other lawyers and, on the other, the divorce hearing did not take place until more than three years later, in February and March 2022. The fact that she filed an amended defence and cross-application on February 14, 2022, just a few days before the hearing of the divorce, is certainly not the Firm's fault.

[89] The Court also notes that defendant applied for an investigation regarding Me Goldwater's conduct with the Syndic of the Barreau du Québec a week after the present action was instituted.² This application was dismissed, as the Syndic concluded that no ethical misconduct had been committed.³ The Court further notes that a claim of one million dollars made by the defendant to the Fonds d'assurance responsabilité professionnelle du Barreau du Québec⁴ some two months after the institution of the present action was also dismissed, as the Fonds concluded that Me Goldwater had not incurred any professional liability.⁵

Is the defendant entitled to compensatory damages of \$100,000?

[90] The defendant will only be entitled to compensatory damages if she demonstrates that the Firm or Me Goldwater committed a fault that directly caused a prejudice¹.

[91] As the Court has already found that no fault was committed, the defendant is obviously not entitled to compensation.

[92] The Court is convinced that defendant had suffered as a result of the proceedings and the judgments rendered in her cases before the Superior Court and the Youth Court, as well as before the appeal Courts.² However, there is no reason to believe that the Firm's lawyers are in any way responsible for this, on the contrary. The trial judges, whose decisions were upheld by the appeal courts, even concluded that the defendant had been the architect of her misfortune. The Court wishes her to take note of this, make amends and look to the future.

¹ Exhibit P-5.

² Exhibit P-57.

³ Exhibit P-54.

⁴ Exhibit P-60.

⁵ Exhibit P-63.

¹ Art. 1458 C.c.Q.

² The evidence shows that she applied twice to the Court of Appeal (exhibits P-72 and P-79) and twice to the Supreme Court (P-73 and P-80), never successfully.

Is the defendant entitled to punitive damages of \$50,000?

[93] The defendant does not invoke any legal provision under which she would be entitled to punitive damages, and the evidence does not support that she is entitled to any. The claim is therefore summarily dismissed.

Is the modified cross-application abusive?

[94] An application or a pleading may be declared abusive if it is, regardless of its author's intent, "clearly unfounded, frivolous or intended to delay or in conduct that is vexatious or quarrelsome." There may also be abuse where there is "use of procedure that is excessive or unreasonable or that causes prejudice to another person, or attempts to defeat the ends of justice".¹

[95] The spectrum of abusive situations is wide, but "la barre [de l'abus] est haut placée et elle doit le demeurer au risque de banaliser ce qu'est une procédure abusive et de constituer un frein à l'accès à la justice".²

[96] In this case, the cross-application is dismissed as it is unfounded. This does not mean, however, that it is abusive.

[97] Under these circumstances, the Firm's request is dismissed.

Various verbal requests

[98] During her testimony, Me Goldwater asked that the defendant be declared a vexatious or quarrelsome litigant and that the judgment be executory notwithstanding appeal.

[99] There are no grounds for granting these requests for the following reasons.

[100] First, the originating application was not modified to include these claims. However, had it been, they would still have been dismissed. Here is why.

[101] It is true that the defendant multiplied the proceedings in her divorce case, which Justice Béliveau found abusive, and that she appealed before this Court, the Court of Appeal and the Supreme Court from several judgments.¹ However, this was long after the end of the Firm's mandate. Further, in the present case, the defendant has not demonstrated any of the traits of a vexatious or quarrelsome litigant. Therefore, there is no reason to declare that she is one.

[102] The request that the judgment be executory notwithstanding appeal would also have been dismissed, even if it had been formally added to the originating application. Indeed, there is no reason to believe that appealing this judgment would cause serious or irreparable prejudice to the plaintiff, as required by article 661 C.C.P. It should be remembered that the amount claimed by the Firm is held entirely in trust, and that the

¹ Art. 51 C.C.P.

² *Biron v. 150 Marchand Holdings inc*, 2020 QCCA 1537, par. 126.

¹ Exhibits P-71 to P-73.

mere delay in obtaining payment of what is owed does not constitute serious or irreparable prejudice within the meaning of the law. Furthermore, no evidence has been presented of any prejudice resulting from the delay.

Application to quash the seizure before judgment

[103] The defendant's application to quash the seizure before judgment was referred to the merits by an interlocutory judgment. Although no representation was made by the defendant in this regard, the application should be disposed of.

[104] The defendant's main argument is that the facts alleged in support of the application for seizure before judgment are insufficient and do not demonstrate that there is reason to fear that recovery of the claim might be jeopardized without the seizure.

[105] The question is now academic, since the plaintiff's claim has been established by the present judgment. In these circumstances and given that the defendant appears to have abandoned her application to quash the seizure before judgment, it is dismissed.

FOR THESE REASONS, THE COURT:

[106] **ORDERS** the defendant to pay the plaintiff the amount of \$177,639.31¹;

[107] **DISMISSES** the application to quash the seizure before judgment;

[108] **AUTHORIZES** that the sum of \$177,639.31 held in trust by plaintiff be paid to the plaintiff when this judgment becomes executory;

[109] **DISMISSES** the modified defence and cross-application;

[110] **DISMISSES** the application so that the modified cross-application be declared abusive;

[111] With legal costs in favour of the plaintiff.

SÉBASTIEN VAILLANCOURT, J.S.C.

Me Marie Anne Martin

¹ The Court understands both from the amendment to the claim made at the hearing and from the Firm's arguments (par. 54) that it is no longer claiming interest.

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Counsel for Cross-Defendant

Ms. D. P.
Representing herself

Hearing dates: September 10, 11 and 12, 2024