No. 245134
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**
IN THE MATTER OF THE *LEGAL PROFESSION ACT*, S.B.C. 1998, Ch. 9, s. 70

BETWEEN:

SINGLETON URQUHART REYNOLDS VOGEL LLP

LAW FIRM

AND:

GERALD ROTERING

CLIENT

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**WRITTEN SUBMISSIONS OF THE CLIENT, GERALD ROTERING, RE STANDING, LIMITATION PERIOD, and NOTICE FOR LPA REVIEW**

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**Time: 10 am**
**Date: Assize week of December 16, 2024**
**Place of Hearing: Victoria, BC**
**Time Estimate: 1 Day**

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# WRITTEN SUBMISSIONS OF THE CLIENT, GERALD ROTERING

## PART I. INTRODUCTION

1. Gerald Rotering seeks a *Legal Professions Act*[1] review of a lawyer's bill ("LPA Review") rendered by Singleton Reynolds Urquhart Vogel LLP (the "Law Firm"). He, along with all other residents in his apartment, pay the Law Firm's legal fees, which are initially billed to their landlord, Westsea Construction Limited ("Westsea"), as part of their leasehold agreements. Mr. Rotering, like all other leaseholders in the building, pays these legal fees without being provided any information or details about those fees. All the leaseholders see is a line item on a schedule of operating costs quantifying the total legal fees for the year.

2. The Law Firm resists this LPA Review and brings three preliminary objections that are the subject of the application and cross-application before the Court. It says that Mr. Rotering has no standing to seek an LPA Review of its bills, that he is out of time to seek a review of its bills, and that Mr. Rotering has to provide notice to all leaseholders so they can participate in the LPA Review.

3. These objections rely on overly technical and narrow arguments that miss the fundamental purpose of LPA Reviews: to ensure those who pay legal fees have a corresponding right to review those legal fees. The Law Firm and Westsea cannot have it both ways. They cannot rely on the contractual agreement to have their legal bills paid from leaseholders, and then say the contract protects or shields them from having the same legal bills reviewed by those same leaseholders. The preliminary objections raised by the Law Firm only serve to frustrate Mr. Rotering's right to ensure that legal bills are subject to independent review. The Law Firm's arguments are squarely inconsistent with the important public purpose of LPA Reviews to ensure "transparency, fairness and reasonableness" of solicitors' accounts.

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[1] *Legal Professions Act*, S.B.C. 1998, c. 9 [*LPA*]

## PART II. FACTS

### A. Background

4. The Client, Mr. Rotering, is a leaseholder at a building located at 647 Michigan Street, Victoria ("Orchard House") that is owned by Westsea. The relationship between Mr. Rotering and Westsea is governed by a 99-year lease agreement.[2]

5. Westsea's obligations under that lease include maintaining the building as described in Article 7.01, which provides:

> 7.01 "Operating Expenses" in this Lease means the total amount paid or payable by the Lessor in the performance of its covenants herein contained (save and except those contained in Article 5.11) and includes but without restricting the generality of the foregoing the amount paid or payable by the Lessor in connection with the maintenance, operation and repair of the Building, expenses in heating the common areas of the Building and each of the Suites therein (unless any of the Suites are equipped with their own individual and independent heating system in which even the cost shall be payable by the Lessee of any such suite) and providing hot and cold water, elevator maintenance, electricity, window cleaning, fire, casualty liability and other insurance, utilities, service and maintenance contracts with independent contractors or property managers, water rates and taxes, business licences, janitorial service, building maintenance service, resident manager's salary (if applicable) and legal and accounting charges and all other expenses paid or payable by the Lessor in connection with the Building, the common property therein or the Lands. "Operating Expenses" shall not include any amount directly chargeable by the Lessor to any Lessee or Lessees. The Lessor agrees to exercise prudent and reasonable discretion in incurring Operating Expenses, consistent with its duties hereunder.[3] [Emphasis added]

6. In 2016, Westsea started charging legal costs to leaseholders as an operating expense.[4]

7. The legal fees charged to Orchard House leaseholders in 2020, 2021, and 2022 are as follows:

   a. $341,244 in 2020

   b. $147,704 in 2021

   c. $224,743 in 2022[5]

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[2] Affidavit #1 of Julie Trache ("Trache #1"), made Oct. 25, 2024, Ex. A
[3] Trache #1, Ex. A, p. 3
[4] Affidavit #1 of Gerald Rotering ("Rotering #1"), made Nov. 7, 2024, para. 3
[5] Trache #1, Ex. B, pp. 19-20

8. Leaseholders pay Westsea operating expenses based on Westsea's estimate of the operating expenses for the next year. For example, in October 2019 Westsea sent leaseholders an estimate for the 2020 operating expenses.[6] This estimate contains no details about how the budget is broken down. Instead, Westsea simply tells leaseholders how much they must pay per month for the following year's expenses. Leaseholders do not find out how much the actual operating expenses were until fall of the next year (i.e. for the 2020 operating expenses leaseholders received a "Schedule of Operating Expenses" in September 2021).

9. The Schedule of Operating Expenses contains a high-level breakdown of the operating expenses into categories such as: audit, electricity, insurance, legal, property taxes, repair and maintenance. Westsea does not provide any further information about the operating expenses categorized as "legal".[7] Westsea has denied Mr. Rotering's requests for additional information or a specific breakdown of the new legal costs line.[8]

10. The Law Firm is counsel for Westsea. Westsea paid the Law Firm $311,824.38 in 2020, $175,916.43 in 2021, and $206,012.42 in 2022 for accounts charged in respect of Orchard House.[9] Westsea does not provide leaseholders with any specific information about the legal fees it charges to leaseholders pursuant to the Lease Agreement and it is unclear why the payments Westsea made to the Law Firm differ from the amounts charged to leaseholders as part of its operating expenses.

## B. Procedural History

11. Mr. Rotering filed his appointment on February 16, 2024.[10]

12. On March 12, 2024, counsel for Mr. Rotering wrote to the Law Firm advising that he was retained. Counsel also sought disclosure of the legal bills at issue, and to set a pre-hearing conference.[11]

13. The Law Firm responded that they would not be disclosing the legal bills.[12]

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[6] Affidavit #1 of Tracy Tso ("Tso #1"), made November 21, 2024, Ex. D
[7] Trache #1, Ex. B, pp. 19-20; Rotering #1, para. 3
[8] Rotering #1, Exs. A, B, C
[9] Trache #1, paras. 25, 27, 31
[10] Trache #1, Ex. B
[11] Rotering #1, Ex. A
[12] Rotering #1, Ex. B, p. 1

14. On March 26, 2024, the Law Firm sent a letter raising the issues which are the subject of these applications. The Law Firm wrote, *inter alia*, "Westsea will not be producing or disclosing any accounts until questions about solicitor/client privilege have been addressed by the Registrar. Only upon specific directions from the Court will we disclose redacted accounts."[13] Notably, the standing of Mr. Rotering was not expressly raised as an issue.

15. The parties attended a pre-hearing conference before Associate Judge Bouck on April 25, 2024. At that hearing, and further to a memorandum from the Court dated April 26, 2024, it was directed that the Law Firm bring an application that other leaseholders should be given notice of the Appointment and that the Appointment should be struck pursuant to s. 70(1) of the *LPA*, and that the Client bring an application for relief under s. 70(11) of the *LPA*.

## PART III. ISSUES

16. The Law Firm's application and the Client's cross-application raise four issues that need to be determined by this Court:

a. Does Mr. Rotering have standing to seek an LPA Review?

b. Is Mr. Rotering out of time to seek an LPA Review?

c. If Mr. Rotering is out of time to seek an LPA Review, are there special circumstances that nonetheless justify an LPA Review?

d. Does Mr. Rotering have to provide notice to all leaseholders of the LPA Review?

## PART IV. ARGUMENT

### A. Standing

17. The Law Firm challenges Mr. Rotering's standing to seek an LPA Review of its bills.

18. Section 70 of the LPA provides:

> **Review of a lawyer's bill**
>
> 70 (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before

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[13] Rotering #1, Ex. C, p. 6

(a) 12 months after the bill was delivered under section 69, or

(b) 3 months after the bill was paid,

whichever occurs first.

19. As such, there are two categories of persons who have standing to issue an LPA Review, "the person charged" or "a person who has agreed to indemnify that person".

20. Mr. Rotering falls in the second category of people that may obtain an appointment to have a bill reviewed. Westsea is the "person charged" and Mr. Rotering has agreed to indemnify Westsea for reasonable legal charges through Article 7.01 of the lease agreement. Mr. Rotering has a statutory entitlement to have the bills reviewed.[14] Whether the legal fees have been paid by the client is not a limitation on an indemnitor's right to seek a review.[15]

21. The Law Firm relies on an overly narrow and technical definition of "indemnity" to argue that Mr. Rotering is not an indemnitor for the purposes of the *LPA*. The Law Firm is asking this Court to differentiate between a "conventional indemnity" and "a contractual provision obligating the Leaseholders to pay" Westsea's legal fees in the context of LPA Reviews.[16] This is a distinction without a difference. To the extent there is any difference between these two obligations, Westsea has not explained what that difference is or how that difference is relevant to an LPA Review.

22. The Law Firm's analysis is at odds with the modern rule of statutory interpretation, which requires words in a statute to be read in their entire context, and harmoniously with the scheme of the Act and statutory objects and purposes. As our Court of Appeal has recently held:

> The modern rule is consistent with s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which provides that every statute must be construed as remedial and "given such fair large and liberal construction and interpretation as best ensures the attainment of its objectives".
>
> As the Supreme Court of Canada has stated on a number of occasions, the grammatical and ordinary sense of a provision is not, on its own, determinative. A statutory interpretation analysis is incomplete without consideration of context and

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[14] See e.g. *Travelers Guarantee Company of Canada v. Ryan*, 2012 BCSC 43 [*Travelers Guarantee*]; *Hammerberg & Co. v. Margitay*, 2001 BCSC 1312 [*Hammerberg*]
[15] *Travelers Guarantee* at paras. 16-17
[16] Written Submissions of the Law Firm, paras. 46, 58

> purpose, no manner how plain the meaning might appear when the provision is viewed in isolation...[17]

23. The Law Firm's attempts to distinguish the specific indemnity clause wording in this case from those in *Travelers Guarantee* or *Hammerberg* suffers from the same overly narrow approach which misses the underlying objectives of the LPA Review provisions.

24. For example, in *Travelers Guarantee*, the provision at issue was one where there was an agreement to pay the "judicial and extra-judicial fees and disbursements of [Travelers'] counsel on a solicitor and client basis and legal fees of the claimant's counsel".[18] The Court does not engage in a technical analysis to determine whether this provision meets the dictionary definition of "indemnity" or contains the words "indemnify", "reimburse", or "compensate", as suggested by the Law Firm.[19]

25. Rather, the Court looks to the underlying policy and purpose behind the provision. Justice Butler, as he then was, writes:

> [12] A contractual agreement to pay the fees cannot escape the statute, since the statute clearly contemplates contracts for indemnity. Clients and indemnifiers cannot contract-out of this right to a review, because of the public interest in the "transparency, fairness and reasonableness of solicitors' accounts": *Echo Energy Canada Inc. v. Lenczner Slaght Royce Smith Griffin LLP*, 2010 ONCA 709 at paras. 36 and 48. An agreement to pay legal bills, no matter how extravagant the bills might be, would incentivize overbilling in a way that is inconsistent with the purpose of the statutory provision.
>
> [13] In this way, legal bills are not like other kinds of expenses incurred by litigants. As one of the checks on the monopoly lawyers have on the provision of legal services in the province, a lawyer's bill is always subject to independent review to ensure that the public is protected against unreasonable legal fees and disbursements.[20]

26. The Court's holding in *Travelers Guarantee* stems from the Court finding the provision was a "contractual agreement to pay fees" and whether immunizing the legal bills from LPA

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[17] *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101, paras. 39-40 [citations omitted]
[18] *Travelers Guarantee*, para. 2
[19] Written Submissions of the Law Firm, paras. 41-45
[20] *Travelers Guarantee* at paras. 12-13 [Emphasis added]

Review would frustrate the purpose of the *LPA*. The Court does not engage in an analysis as to whether the provision met a technical definition of "indemnity".

27. The reasoning in *Travelers Guarantee* has been adopted and applied in the subsequent case of *Mee Hoi Bros. Company Ltd.*, where Justice Walker cited the case "not only for its approach to defining an indemnitor, but for the broad statement of principle concerning the overarching application of the *LPA* to all legal accounts issued in the Province".[21]

28. It this case, Westsea is using a contractual agreement to pass on significant legal fees to leaseholders at Orchard House. This situation is clearly contemplated by the *LPA* and cannot escape the statute. If leaseholders are not able to review the Law Firm's accounts under the *LPA*, then there is no check on the Law Firm's bills and the Firm is incentivized to overbill in a way that is inconsistent with the purpose of s. 70 of the *LPA*.

29. The Law Firm also argues that Westsea's duty to exercise its reasonable and prudent discretion in incurring operating expenses "fundamentally alters" Mr. Rotering's obligations in relation to the legal fees at issue.[22] Westsea's discretion to include or exclude certain legal charges does not alter the nature of the agreement. A party can always elect to not pass on all the charges to the counterparty in an indemnity agreement. There is also no principled reason why a clause which only allows indemnity of "reasonable" legal fees (as in the case here), which would normally connote costs at the tariff scale,[23] would oust the *LPA*, but an indemnity agreement which is not subject to "reasonable" standards would be amenable to *LPA* review. Indemnity clauses can be worded in many different ways with different qualifications; the specific wording of the indemnity clause does not alter the underlying character of the clause. The specific wording of the clause may form one of the circumstances that must be considered in reviewing the lawyer's bill under s. 71, but it is not relevant to whether the *LPA* applies.

30. The Law Firm also tries to distinguish the facts in this case from what happened in *Hammerberg* on the basis of the wording of the relevant indemnification provision. The Law Firm points out that the strata bylaw at issue in *Hammerberg* was clear and created a more direct

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[21] *Mee Hoi Bros. Company Ltd. v Borving Investments (Canada) Ltd.*, 2017 BCSC 1910, para. 225
[22] Written Submission of the Law Firm, para. 47
[23] *Tsawwassen Quay Market Corporation v. Delane Industry Co. Ltd.*, 2011 BCSC 940, para. 13

relationship between the person who is obligated to pay and the accounts charged. The Law Firm even refers the Court to a similar provision in the Orchard House Lease Agreement – Article 8.02.[24] That provision provides:

> If the Lessee shall fail to perform any covenant or condition of this Lease on his part to be performed, the Lessor may (but shall not be obligated to do so) perform such covenant or condition as agent of the Lessee and all amounts paid by the Lessor in respect thereof and all costs, damages and expenses suffered or incurred by the Lessor in respect thereof shall be due and payable by Lessee to the Lessor on demand as rent and the Lessor may exercise any remedy in respect of the recovery of any such amounts as it might for rent in arrears.

31. Article 8.02 is perhaps the more appropriate provision for Westsea to recover legal expenses related to enforcing provisions against individual owners. Using this provision would ensure that, for example, an owner that refuses to pay their monthly fees is the only party held responsible for Westsea's enforcement costs, rather than using Article 7.01 to collect legal fees from all owners even when the legal fees only relate to a subset of owners. But Westsea's decision to rely on Article 7.01 instead of Article 8.02 does not change the fundamental fact Westsea is charging its legal costs to leaseholders through a contractual agreement to pay fees. Accepting the Law Firm's argument on this point would mean that Mr. Rotering's right to review legal fees rests solely on what provision Westsea chooses to apply.

32. Finally, the Law Firm argues that Mr. Rotering has other forms of relief if he wants to ensure that Westsea's operating expenses are reasonable.[25] That is not the purpose of the LPA Review. The *LPA* seeks to ensure that *lawyer's* accounts are fair and reasonable.

33. Westsea is charging all or substantially all of its legal costs to leaseholders as operating expenses. In this situation, the leaseholders are the only party with an interest in ensuring the Law Firm's accounts are reasonable and fair and are statutorily entitled to review those accounts. To find otherwise would give Westsea a blank cheque that it can use to pay even the most extravagant legal fees, then charge all of those legal fees to the Orchard House leaseholders who have no ability to review the reasonableness of those fees.

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[24] Written Submissions of the Law Firm, para. 58
[25] Written Submission of the Law Firm, para. 62

34. The purpose of the *LPA* is to regulate the monopoly the legal profession has on the delivery of legal services in British Columbia. Finding Mr. Rotering is not an indemnitor for the purposes of the *LPA* would undermine the *LPA*'s function as a check on the monopoly lawyers have on providing legal services.

**B. Limitation Period**

35. The Applicant Law Firm argues that the limitation period for accounts from 2020 and 2021 has passed since Westsea has already paid the relevant accounts and Mr. Rotering has paid his portion of the operating expenses, which includes the legal fees.

36. Section 70 of the *LPA* states that a bill may be reviewed within 12 months after the bill was delivered under s. 69. Section 69 sets out specific requirements for a lawyer's bill, including the bill must contain a reasonably descriptive statement of the services.

> **Lawyer's bill**
>
> 69 (1) A lawyer must deliver a bill to the person charged.
>
> (2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.
>
> (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.
>
> (4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.
>
> (5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.
>
> (6) The court may permit a lawyer to sue to collect money owed on a bill before the end of the 30 day period if the court finds that
>
> (a) the bill has been delivered as provided in subsection (1), and
>
> (b) there is probable cause to believe that the person charged is about to leave British Columbia other than temporarily.

37. Mr. Rotering has not received a bill that meets the s. 69 requirements. Westsea charges legal fees to leaseholders as "operating expenses" under the lease. The Schedule of Operating

Costs that Westsea sends to leaseholders does not meet the s. 69 bill requirements. The Schedule only shows the total operating expenses, there is no breakdown by category (e.g. repairs and maintenance; electricity; property taxes; heat; insurance; legal) included.[26] There is no description of the services provided or costs of those services and the "bill" is not signed by or on behalf of a lawyer.

38. Having the operating schedule constitute a "bill" to start the limitation period undermines the purpose behind the *LPA* provisions to ensure the transparency and accountability of lawyer's bills. It places those ultimately paying the legal bills in an impossible position of deciding whether to challenge a lawyer's bill with no information about what the bill is about or any sense whether it is reasonable or not.

39. Further, given the information asymmetry, it is unknown whether any of the legal fees paid by Mr. Rotering are for interim accounts or final accounts. The time period in which to have a bill reviewed does not start until Mr. Rotering has received a copy of the final account.[27] Indeed, on the limited evidence that is in the record, it appears that the Law Firm is billing Westsea on matters that are not complete, such as the "Appliance Litigation" which is ongoing.[28]

40. At the very least, for the limitation clock to commence, Westsea would have to deliver to Mr. Rotering a copy of a final account and notice that they have paid a final account.[29] It is undisputed that Westsea has not done so.

## C. Special Circumstances

41. If Mr. Rotering is wrong and the review of the 2020 and 2021 accounts are out of time, then Mr. Rotering seeks relief pursuant to s. 70(11) of the *LPA*:

> (11) In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:
>
> (a) the lawyer has sued and obtained judgment for the amount of the bill;

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[26] Trache #1, Ex. B, pp. 19-20
[27] *Travelers Guarantee*, para. 21
[28] Trache #1, paras. 26, 29, 32, 34
[29] *Travelers Guarantee*, para. 22

(b) application for the review was not made within the time allowed in subsection (1).

42. Section 70(11) of the *LPA* provides that an LPA Review may be conducted past the limitation deadline in special circumstances. Special circumstances must be assessed on a case by case basis. There is no dispute between the parties that Master Young set out the relevant non-exhaustive list of criteria for finding special circumstances:

1. Each case must be determined on its own facts.

2. The onus of proving that a special circumstance exists rests on the applicant seeking to review the legal accounts.

3. Reasonable explanation for the delay in filing the appointment is critical. The longer the delay, the more important the reasons become.

4. Ignorance of the existence of the limitation period by itself is not sufficient to establish a special circumstance.

5. The very size of accounts when considered with the nature of the work can be taken into account as a special circumstance.

6. A number of factors, none of which individually would amount to special circumstances, in combination may be so.

7. Charging for work that was not performed is a special circumstance.

8. Pressuring the client to pay without giving him the opportunity to review the account may be a special circumstance; for example, threatening to abandon a client the day before his trial if the bill rendered that day is not paid.

9. Rendering an account far in excess of an estimate for fees might be a special circumstance.

10. If the account document itself does not set out sufficient detail to determine how many hours were charged for what by whom, that may be a special circumstance.

11. The court will consider prejudice to both parties. When the lawyer received actual notice of the intention to review his or her accounts may be a factor in determining prejudice.[30]

43. In this case, Mr. Rotering did not receive the accounts when they were issued by the lawyer or when they were paid by the client. Mr. Rotering has never received any documentation setting

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[30] *Worth v. Spelliscy*, 2011 BCSC 847 at para. 22 [emphasis added]

out how many hours were charged for what. The Law Firm argues he did not receive that information because he is not a person charged or indemnifier under the *LPA*.[31] That argument is irrelevant to the special circumstances analysis as it is premised on Mr. Rotering not having any standing to bring an *LPA* review at all.

44. Justice Butler in *Travelers Guarantee* noted that a special circumstance would normally arise where an indemnitor does not receive the accounts when they are issued by the lawyer, or paid by the client.[32]

45. The Law Firm argues that *Travelers Guarantee* is inapplicable because Mr. Rotering has paid his accounts.[33] This misses the point. The special circumstance arises here because of the lack of transparency and information provided to leaseholders. It does not turn on the fact that the leaseholder has paid those costs despite the dearth of information. Indeed, it is understandable why a leaseholder may not wish to withhold payment and risk litigation or the other legal consequences of having outstanding operating expenses (e.g. Westsea seeking to terminate a lease for non-payment of operating expenses).[34]

46. When assessing relative prejudice, the prejudice to Mr. Rotering outweighs the prejudice to the Law Firm. Mr. Rotering (and indeed all leaseholders) will be prejudiced if he cannot review the Law Firm's legal accounts because he has no way of assessing the reasonableness of the legal costs. The purpose of the *LPA*, to ensure a check on the monopoly of lawyers on the provision of legal services, and his right to do so, would be frustrated.

47. The Law Firm argues that it and Westsea will be prejudiced by the disclosure of potentially privileged and confidential information. Any risk that privileged information respecting ongoing litigation will be revealed by disclosing the 2020, 2021, and 2022 legal accounts is overstated and can be mitigated.

48. The two main pieces of ongoing litigation that Westsea raises privilege concerns with, in the context of this *LPA* review are: (i) litigation involving dishwashers installed without Westsea's

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[31] Written Submissions of the Law Firm, para. 82
[32] *Travelers Guarantee* at paras. 22-23
[33] Written Submissions of the Law Firm, para. 23
[34] Trache #1, Ex G. pp. 88-89

consent; and (ii) litigation involving legal expenses incurred in the context of Westsea defending a petition and an action started by Hugh Trenchard, an Orchard House Leaseholder (the "Trenchard Litigation").

49. Mr. Rotering has never had a dishwasher and is not involved in the dishwasher dispute,[35] so he does not have an adverse interest. The Law Firm submits that it would be prejudiced if it has to disclose its accounts to Mr. Rotering because the appliance litigation deals with sensitive and personal information of various leaseholders.[36] First, it is unclear why a lawyer's bill would include details of such sensitive and personal medical or disability information, or why in assessing the reasonableness of those bills, such information would be relevant. Second, and in any event, sensitive and personal information can be easily be redacted from the accounts. Further confidentiality orders can be made if required to protect that personal information.

50. Mr. Rotering also accepts that the Trenchard Litigation fees, which are the subject of Petition 184015, can be excluded or redacted for the purposes of this LPA Review.[37] But the Law Firm ought not to be able to shield all its other legal fees from being reviewed just because there is an ongoing dispute over a subset of its fees.

**D. Notice**

51. The Law Firm relies on the Court of Appeal decision in *Trenchard v. Westsea Construction Ltd.*,[38] in arguing that the client is required to provide notice to all leaseholders for this LPA Review. This case is not applicable to *LPA* reviews, rather it is about the need for Westsea to notify all leaseholders if it elected to charge back litigation costs to its leaseholders. The need for notice is obvious in those circumstances – the leaseholders would have an adverse interest to Westsea and ought to be given the opportunity to challenge its decision.

52. Notice in this case does not serve any purpose. Mr. ~~Trenchard~~ Rotering is not proposing any action that adversely affects other leaseholders' rights. Rather, if he is successful, presumably all leaseholders will benefit. Further, other leaseholder would have little to add to the LPA Review.

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[35] Rotering #1, para. 8
[36] Written Submission of the Law Firm, para. 96
[37] Rotering #1, Ex. D, p. 15
[38] 2017 BCCA 352

It would simply make the LPA Review process unnecessarily cumbersome.

53. Requiring Mr. Rotering, or any leaseholder, to provide notice to all other leaseholders only serves to put a significant barrier to a leaseholder being able to exercise their rights and hold a Law Firm accountable for its billing.

## E. Costs

54. Mr. Rotering seeks his costs of these applications.

55. If the Court awards costs, Mr. Rotering urges the Court to also find that the Law Firm's fees on this application cannot be charged back to Mr. Rotering or the other leaseholders, as the Court similarly held in *Travelers Guarantee.*[39] To hold otherwise would not only render the Court's costs award essentially meaningless, but also frustrate the purpose of the LPA Review.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: 04 Dec 2024

Signature of lawyer for Client, Gerald Rotering
**David W. Wu and Caroline North**

[39] *Travelers Guarantee*, para. 25

## List of Authorities

| Tab | Description |
|---|---|
| **Cases** | |
| 1 | *Hammerberg & Co. v. Margitay*, 2001 BCSC 1312 |
| 2 | *Mee Hoi Bros. Company Ltd. v Borving Investments (Canada) Ltd.*, 2017 BCSC 1910 |
| 3 | *Travelers Guarantee Company of Canada v. Ryan*, 2012 BCSC 43 |
| 4 | *Trenchard v. Westsea Construction Ltd.*, 2017 BCCA 352 |
| 5 | *Tsawwassen Quay Market Corporation v. Delane Industry Co. Ltd.*, 2011 BCSC 940 |
| 6 | *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101 |
| 7 | *Worth v. Spelliscy*, 2011 BCSC 847 |
| **Statutory Provisions** | |
| 8 | *Legal Professions Act*, S.B.C. 1998, c. 9 |