IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fontaine v. Canada (Attorney General),* 2015 BCSC 717

Date: 20150501
Docket: L051875
Registry: Vancouver

Between:

Larry Philip Fontaine et al

Plaintiffs

And

The Attorney General of Canada et al

Defendants

Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment

Counsel for the Attorney General of Canada:	C. Coughlan
Counsel for Stephen Bronstein and Bronstein & Company:	M. D. Andrews, Q.C.& G. Cameron
Counsel for Crawford Class Action Services Inc. in its capacity as Court Monitor:	L. Zivot & H. Drabinsky
Independent Counsel:	K. Williams
National Consortium	J. Faulds
Assembly of First Nations	S. Wuttke
Tsilhqot'in National Government	G. Kosakoski
Merchant Law Group	J.A. Summers
Counsel for the Court:	B. Gover
Place and Dates of Hearing:	Vancouver, B.C. March24-27, 2015
Place and Date of Judgment:	Vancouver, B.C. May 1, 2015

Nature of Application

[1] This application is in regard to the conduct of Mr. Stephen Bronstein and his law firm, Bronstein & Company (collectively, "**Bronstein**" or the "**Bronstein Parties**") in their representation of over 1400 individuals making claims under the Independent Assessment Process (the "**IAP**") established in the Indian Residential Schools Settlement Agreement (the "**IRSSA**" or the "**Settlement Agreement**"). The application follows a nearly two-year long investigation, and has included several proceedings before this court, resulting in several orders and directions.

[2] The Court Monitor appointed to oversee the implementation of the Settlement Agreement, Crawford Class Action Services (the "**Monitor**") first brought a Request for Direction ("**RFD**") in this matter in November 2012. This RFD eventually resulted in a Consent Order that I issued on February 22, 2013 (the "**2013 Order**"). Pursuant to the 2103 Order, Bronstein was obliged to facilitate an investigation by the Monitor into the relationship between it and Ivon Johnny.[1] This court has barred Mr. Johnny from further participation in the IAP. Mr. Bronstein was also to attend an interview with the Monitor. Further, Bronstein also agreed to submit its IAP practice to review.

[3] Several subsequent RFDs were brought in regard to Bronstein's adherence to the terms of the 2013 Order. The Monitor has completed its investigation and brings this most current RFD seeking an order banning Bronstein from further participation in the IAP and requiring him to pay the costs of the Monitor's investigation.

[4] Upon hearing all of the evidence, I agree with the Monitor that Bronstein's conduct fell below the standard expected of legal professionals representing clients under the Settlement Agreement, and in particular, in the IAP. However, I am not convinced that Bronstein's conduct makes it is necessary to remove the lawyer and the law firm from the IAP and cause disruption to its over 150 clients who have outstanding IAP claims. This is particularly the case because, in response to these proceedings, Bronstein has demonstrated that it is capable of revising its practice in

[1] Mr. Johnny provided various services to the firm's IAP claimant clients, including form-filling services. Mr. Johnny is alleged to have exorted and intimidated a number of these clients

order to reach acceptable standards. Bronstein will continue to participate in the IAP, but will do so under the continued supervision of its Practice Advisor and will continue to update the court on its progress.

[5] However, this is no exoneration of Bronstein: the evidence convinces me that were it not for the intervention of the Monitor and this court, Bronstein would not have reached these acceptable standards. Bronstein should pay reasonable costs of the Monitor's investigation. Below, I will detail the procedure for determining the amount for which Bronstein will be liable.

[6] Finally, in its submissions, the Monitor also raised the issue of the claims that some of Bronstein's clients may have against the firm and Mr. Johnny as a result of the damages that they suffered. The Monitor suggested that the court direct a process whereby these issues can be determined. I agree with this suggestion and elaborate below on the process for addressing those claims.

Background and Overview

(a) Administration of the Settlement Agreement

[7] For over a century, until the program finally ended in 1996, Aboriginal children were removed from their families and communities and educated in "Indian residential schools" ("**IRSs**"). The result was generations of Aboriginal youth growing up away from their families, language and culture, and many suffering sexual and other forms of abuse. The Government of Canada ("**Canada**") has conceded that the IRS program was a misguided policy, and has formally apologized to Canada's First Nations people for its implementation.

[8] Canada has committed to providing compensation to affected individuals pursuant to the terms of the Settlement Agreement. On December 15, 2006, the superior courts in nine provinces and territories (the "**Courts**") concurrently issued reasons approving a national settlement concluding various class actions related to IRSs throughout Canada (the "**Approval Orders**").

[9] The Courts subsequently issued orders on March 8, 2007, which incorporated the terms of the Settlement Agreement and otherwise addressed its implementation and administration (the "**Implementation Orders**"). The Implementation Orders provide additional administrative details regarding the implementation and administration of the IRSSA.

[10] Paragraphs 1 to 6 of the Implementation Orders deal with the appointment and scope of engagement of the Monitor. The Monitor's role is to oversee the administration of the Settlement Agreement and to communicate and report any issues that arise to the Courts.

[11] Paragraphs 20 and 23 as well as Schedule "A" of the Implementation Orders provide for the Courts' ongoing supervision of the Settlement Agreement. Paragraph 20 and Schedule "A" deal with the manner in which applications relating to the implementation of the IRSSA will be dealt with by the Courts. Pursuant to Schedule "A", one of two Administrative Judges will respond to issues that arise in relation to the administration of the Settlement Agreement. These issues are brought before the court through the use of a "Request for Direction". I am currently the Western Administrative Judge.

[12] Paragraph 23 of the Implementation Orders explicitly grants the Courts supervisory authority over the IRSSA, the Approval Orders and the Implementation Orders:

> 23. The Courts shall supervise the implementation of the Agreement and this order and, without limiting the generality of the foregoing, **may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Agreement, the judgment dated December 15, 2006 and this order**. [emphasis added]

(b) Compensation under the Settlement Agreement

[13] Pursuant to the Settlement Agreement there are two types of compensation available to class members:

a) a "Common Experience Payment" for those who resided at an IRS, as that term is defined in the IRSSA; and

b) compensation by way of the IAP.

[14] As alluded to above, this application arises in relation to the IAP and the representation of claimants within that process.

[15] The IAP is a procedure that allows class members to advance claims for physical or sexual abuse suffered while at any of the IRSs recognized in the IRSSA. Those types of abuse which are compensable within the IAP are labeled "continuing claims" (see Schedule D, Part I at p. 2).

[16] The purpose of the IAP is to provide a forum for the resolution of the above-noted claims of abuse. The hearings are inquisitorial. The process is designed to minimize further harm to claimants. The adjudicator presiding over a hearing is charged with asking questions to elicit the claimant's testimony. The hearings are meant to be considerate of the claimant's comfort and well-being but they also serve an adjudicative purpose where evidence and credibility are tested. It is strongly recommended that claimants retain legal counsel to advance their claims within the IAP.

[17] Lawyers' fees for class members participating in the IAP are paid through a combination of money from Canada and contingency fees charged as a percentage of the compensation obtained by claimants. Pursuant to the IRSSA, Canada will pay an additional 15% on top of any award made to a claimant towards his or her legal fees. In addition, claimants' counsel may negotiate with their clients further fees of up to 15% to come out of the award. Regardless of any other arrangement with their clients, lawyers representing claimants in the IAP have their fees subject to an overall cap of 30% of any award, including Canada's portion. In addition, the fees charged to a claimant are subject to review and adjustment by the adjudicator hearing a particular claim at the request of the claimant or on the adjudicator's own initiative (see paragraphs 17 and 18 of the Implementation Orders).

Facts

(a) Mr. Bronstein and his practice

[18] Mr. Bronstein is a lawyer resident in British Columbia. He was called to the bar in 1998 and has continued to be a member of the Law Society of British Columbia since that time.

[19] Starting in or about 1999, Mr. Bronstein devoted the majority of his practice to representing claimants of abuse at IRSs. Since 2001, his practice has been almost exclusively restricted to representation of IRS claimants. He is the principal of Bronstein & Company. Bronstein represents IAP claimants primarily in British Columbia and in the Prairie Provinces.

[20] As a part of his IAP practice, Mr. Bronstein worked with a number of "form fillers" – individuals who assist potential IAP claimants in their community complete their IAP application forms. Afterwards, these form fillers would act as liaisons for Bronstein in its communications with these clients. Mr. Bronstein's evidence is that his rationale for working with such agents is that they live in the communities where the victims of IRS abuse reside and speak their language.

(b) Formation of the relationship between Messrs. Bronstein and Johnny

[21] The relationship between Messrs. Bronstein and Johnny began when Mr. Bronstein represented Mr. Johnny in the latter's IRS-based claim (Mr. Johnny participated in the ADR process established prior to completion and approval of the IRSSA). Through this representation Mr. Bronstein came to learn several facts about Mr. Johnny, including the fact that he had been convicted and incarcerated for murder.

[22] Some time after his own IRS case was resolved, Mr. Johnny approached Mr. Bronstein about working with him as a form filler. Eventually, beginning in or about mid-2008, Mr. Johnny began to perform this service for Bronstein in the Williams Lake area of British Columbia where Mr. Johnny was originally from.

Mr. Johnny would refer clients to Bronstein and would receive a fee for each IAP application form completed. Initially, Bronstein paid Mr. Johnny $225 for filling out a retainer agreement (including the contingency agreement) and IAP form for a client. This fee later rose to $300 per application.

[23] In terms of reviewing his background, Mr. Bronstein concedes that he did not contact the Chiefs of the Tsilhqot'in First Nations to inquire about Mr. Johnny, nor could he recall whether he made any efforts to assess Mr. Johnny's reputation in the Williams Lake community. In fact, during his interview with the Monitor, Mr. Bronstein conceded that prior to Mr. Johnny's start, he had no idea whether people in the community "were afraid of him, [or] whether they thought he was a respected elder".

[24] Mr. Bronstein's evidence is that despite these facts, it was reasonable for him to believe that it would be appropriate for Mr. Johnny to act as a form filler. Mr. Bronstein states that prior to hiring Mr. Johnny, he reviewed the National Parole Board's decision in relation to Mr. Johnny, which stated that Mr. Johnny:

a) realised the self-destructive path that he was on;

b) had developed respect, responsibility and patience for leading a "pro-social life";

c) was a man of "positive behaviour", a person focused on "resolving problems rather than raising them"; and

d) presented a low risk for reoffending.

[25] Mr. Bronstein's position is that he reasonably relied on this report to conclude that Mr. Johnny could be trusted to provide IAP services. Mr. Bronstein also points to his observations of Mr. Johnny's interactions with IAP clients to justify his decision. Mr. Bronstein states that all of Mr. Johnny's interactions with clients were "without fail, positive". He states that his clients never showed any sign of fear or reluctance to deal with Mr. Johnny.

[26] In addition, Mr. Bronstein states that he provided significant training to Mr. Johnny when he began providing this service. This training included a review of the contingency agreements that these clients were to sign in order to become clients of Bronstein as well as a review of what is required when filling out the IAP forms.

(c) Fees earned by Mr. Johnny

[27] Mr. Johnny provided services for Bronstein from mid-2008 until mid-2012. In total, Bronstein paid him approximately $180,000.00 during this period. There was no evidence before me that Bronstein passed on any of Mr. Johnny's fees on to its clients.

[28] In addition to providing services as a form filler, Mr. Johnny provided other services to Bronstein's IAP clients. Invoices created by Mr. Johnny suggest that he was providing a wide variety of services including consulting services, spiritual coaching and providing "legal updates". These invoices suggest that Mr. Johnny spent hundreds of hours with these clients. Mr. Johnny charged Bronstein for the provision of these services at the rate of $50 per hour.

[29] Mr. Bronstein's evidence is that none of the IAP clients paid for any of these services. Further, Mr. Bronstein asserts that his firm did not pay Mr. Johnny for the time set out in those invoices. Instead, the bookkeeper at Bronstein would discuss these invoices with Mr. Johnny and come up with a reasonable payment. Mr. Bronstein did not participate in the bookkeeper's review of these invoices. However, Mr. Bronstein did concede that he was aware that Mr. Bronstein was providing his clients with spiritual advice.

(d) Allegations of harassment committed by Mr. Johnny

[30] Much of the evidence at this hearing dealt with Mr. Bronstein's response to the complaints he received regarding Mr. Johnny's conduct with Bronstein IAP clients. At issue is whether Mr. Bronstein's response to these communications was appropriate and consistent with the standards expected of lawyers representing

clients in the IAP. As will be further discussed below, this assessment is made in a context where three of Mr. Bronstein's former clients have provided evidence that Mr. Johnny took portions of their settlement funds.

[31] For each of the complaints, Mr. Bronstein is able to point to some evidence to justify his inaction. Usually, these justifications revolve around reasons why Mr. Bronstein discounted the complaints as rumours that were not credible. However, ultimately, Mr. Bronstein concedes that he "did not do enough" to investigate these complaints.

[32] The evidence regarding these complaints is set out below, in chronological order. As will be seen, the complaints span the period from November, 2009 to February, 2012.

[33] The first complaint was received on November 26, 2009. A court worker in Williams Lake sent Bronstein an email advising that Mr. Johnny was "demanding money" from one of Bronstein's clients. Mr. Bronstein's evidence is that he did not receive this email when it was sent and was unaware of its existence until the Consent Order. During his interview with the Monitor, Mr. Bronstein stated that his assistant monitored his email and failed to bring this message to his attention. Mr. Bronstein provided no further explanation. In his most recent affidavit, provided for the purpose of this hearing, Mr. Bronstein accepted responsibility for this shortcoming at his office and advised that this has been corrected.

[34] The next incident occurred on December 9, 2009 and involved a direction from a client that Bronstein forward a portion of her settlement funds to Mr. Johnny. Mr. Bronstein's evidence is that in response to this fax he advised Mr. Johnny that the client should not be giving him some of her compensation and on May 19, 2010, Mr. Johnny sent the Bronstein Parties a renunciation of the client's direction.

[35] The next event occurred on February 10, 2011, when the court worker sent another email to the Bronstein Parties wherein she advised of two additional clients who informed her that Mr. Johnny was requesting money from them. Mr. Bronstein's

evidence is that when his assistant brought this email to his attention, Mr. Johnny happened to also be in his office and he immediately had a meeting with him. Although Mr. Bronstein cannot remember what was said during this meeting, he provided the following evidence:

> I am sure that after having spoken to Mr. Johnny I was satisfied that there was nothing in the complaint ... I am sure I was satisfied that Mr. Johnny understood it was not appropriate to ask people for part of their compensation money.

[36] Mr. Bronstein's evidence is that this was the first complaint regarding Mr. Johnny that had come to his attention after two and half years of working together. He was inclined to give Mr. Johnny the benefit of the doubt. Significantly, Mr. Bronstein has no recollection of contacting one of the clients in regard to this matter. Further, he did not speak with the other client until February 5, 2012, approximately one year after this event. During this conversation the client told Mr. Bronstein that Mr. Johnny requested $20,000 for a family headstone, but that he refused this request. Mr. Bronstein's evidence is that the client told him that Mr. Johnny did not threaten him. As such, Mr. Bronstein states that this incident did not concern him: he looked at it as a request for a loan which had been turned down.

[37] The next complaint occurred in or about August 2011, when Mr. Bronstein had a conversation with another client. During this conversation, that client told him that Mr. Johnny had asked for money, however there was no mention of any threats of violence. Mr. Bronstein states that he addressed this issue with Mr. Johnny who denied requesting money from that client and calling him a "habitual liar".

[38] Mr. Bronstein provides additional evidence regarding his "scepticism about the credibility" of this complaint. Mr. Bronstein states that his knowledge of the background of this client cast doubt on his ability to "narrate incidents accurately". As such, Mr. Bronstein believed Mr. Johnny's version of events.

[39] The next complaint occurred in either September or December of 2011, when an individual left a message with a receptionist at Bronstein that Mr. Johnny was "evil" and "ripping off a lot of people"; that after claimants had received their

settlement funds he would "tak[e] them to the bank, mak[e] them cash their cheques and tak[e] money from them". However, the notes also suggest that those complaints arose in the context of an unrelated matter involving Mr. Johnny. Mr. Bronstein contacted the individual to discuss her message. Afterwards, he contacted a person involved in the non-IRSSA matter. That person advised that there was no basis to the allegations regarding Mr. Johnny. Mr. Bronstein stated that this statement had a "big effect on me". He did not believe the complaints were credible and did not reassess his view of Mr. Johnny. At his interview with the Monitor, Mr. Bronstein could not recall whether he discussed this complaint with Mr. Johnny.

[40] On October 31, 2011, yet another client of Bronstein left a message with the firm's receptionist. According to this message, that client was inquiring as to whether she had to pay Mr. Johnny. The message notes that the caller's sister had advised the caller that their brother had paid Mr. Johnny $50,000. Mr. Bronstein returned the call on November 25, 2011. During this conversation the client denied leaving the message. Mr. Bronstein made notes of this call and recorded the caller's statement that being associated with the message could "get me in trouble with Ivon". Mr. Bronstein's evidence is that his impression was that the client did not want to be associated with a false rumour.

[41] In response to the message, Mr. Bronstein did not make efforts to contact either of the two others referred to in the message (*i.e.*, the brother or the sister of the caller). He suggested during his interview that was due to the fact that the brother, "AA" was "very difficult" to get a hold of. AA subsequently swore an affidavit wherein he stated that Mr. Johnny took $30,000 of his settlement funds. However, Mr. Bronstein asserts that: (a) AA never made him aware of this fact; and (b) because of AA's background he had concerns about AA's credibility. Significantly, Mr. Bronstein could not recall having a specific conversation with Mr. Johnny about this incident.

[42] On January 3, 2012, “BB”, a client of Bronstein, contacted the firm and left a message with the receptionist. BB had advised that while he originally wanted Mr. Johnny to attend his IAP hearing, he no longer did because of stories that he had heard that Mr. Johnny had been "ripping people off". Mr. Bronstein indicates that this note was not brought to his attention until November 2012. Mr. Bronstein next saw BB at his IAP hearing on November 21, 2012. Either before or after the hearing, the two had a conversation about Mr. Johnny. Mr. Bronstein states that BB told him that when he was filling his IAP application with Mr. Johnny, the latter complained about the people who did not pay him anything for his assistance. BB stated that he would give Mr. Johnny some money if he was successful at his hearing. Mr. Bronstein’s evidence is that he told BB that he should not pay any funds to Mr. Johnny.

[43] On February 14, 2012, “CC”, a client of Bronstein, contacted the firm and left a message with the bookkeeper. The bookkeeper made notes of this call. The notes suggest that CC advised that Mr. Johnny was collecting $15,000 -$20,000 from other Bronstein clients and was "taking advantage" of people who could neither read nor write. Mr. Bronstein's evidence is that this note was not brought to his attention until after the Monitor filed its November 2012 RFD.

[44] Also on February 14, 2012, Mr. Bronstein had a telephone conversation with “DD”, a relative of one of the clients who raised concerns about Mr. Johnny. Mr. Bronstein made notes of this conversation. In his notes Mr. Bronstein recorded that DD advised him of the following allegations regarding Mr. Johnny:

a) DD’s relative had paid Mr. Johnny $10,000;

b) Mr. Johnny had requested $10,000-$18,000 from DD, depending on the size of her settlement;

c) Mr. Johnny had requested $10,000 from another client;

d) Mr. Johnny had requested $10,000 each from two other clients (EE and FF);

e) Mr. Johnny had requested $10,000 from a fourth client;

f) Mr. Johnny had approached both a fifth and sixth client for money; and

g) People were afraid to discuss Mr. Johnny's demands for money because they knew that he had been in jail. She also advised Mr. Bronstein that Mr. Johnny had put a "bounty" on a client's head.

[45] Mr. Bronstein responded to these allegations by calling EE, a client whom he considered to be "reliable and credible". EE told Mr. Bronstein that Mr. Johnny had never asked for a portion of her or FF's settlement funds and that he had never threatened either of them. She advised that he once asked for a loan and that she denied this request. Mr. Bronstein stated that he did not take the loan request to be "nefarious" because seeking and providing loans was "commonplace amongst members of this community". Mr. Bronstein's evidence is that this call led him to believe that the rumours about Mr. Johnny were not true.

[46] Mr. Bronstein's evidence is that on February 16 or 17, 2012, he spoke to Mr. Johnny about the complaints. Mr. Bronstein states that Mr. Johnny denied all of the allegations that he was taking money from people. Mr. Bronstein's evidence is that up until this point he had witnessed only positive interactions between Mr. Johnny and his IAP clients. He characterized the allegations as "rumours" which were unsubstantiated and of which he had personally seen no evidence. Further, Mr. Bronstein stated that "it's not uncommon in First Nations communities to hear rumours". These factors combined to lead Mr. Bronstein to trust Mr. Johnny. However, he also stated that:

> I now realize that I should have done more. If I had it to do over, I would certainly do more investigation and I would seek advice from a bencher for guidance.

[47] On February 29, 2012, Mr. Bronstein received a fax from a friend of a client in relation to that client's file. By this time, that client had obtained a settlement. After Mr. Bronstein had sent the cheque to a nearby hotel to be picked up, the client contacted Mr. Bronstein to request a direct deposit into his account. In the February

29 fax, the friend provided this direct deposit information, and also stated that there are to be "no further dealings with Ivan Johnny, he's of interest to the RCMP". The friend said that he did not receive a response to this fax. The friend also stated that he sent a second fax and left a voicemail at Mr. Bronstein's office, neither of which was returned.

(e) The Chief Adjudicator advises Mr. Bronstein of allegations regarding Mr. Johnny and subsequent events

[48] On April 11, 2012, Mr. Bronstein had a meeting with then Chief Adjudicator Ish and Deputy Chief Adjudicator Knox. They advised him of allegations that Mr. Johnny had demanded that IAP claimants provide him with a portion of settlement funds.

[49] Mr. Bronstein's evidence regarding this meeting conflicts with that of Mr. Ish and Ms. Knox. Both Mr. Ish and Ms. Knox state that Mr. Bronstein expressed surprise at the allegations against Mr. Johnny. Mr. Bronstein attempted to provide context this impression, noting that he was given no advanced notice of the meeting. He states that while he expressed surprise at the allegations, he did not say that he had never heard any allegations regarding Mr. Johnny.

[50] In and around the summer 2012, Mr. Johnny was arrested and imprisoned for his conduct in relation to IAP claimants. Eventually, his parole was revoked. Mr. Bronstein states that in and around this time, based on further information that he received from the Chief Adjudicator's office, he decided to cease working with Mr. Johnny.

[51] As noted above, in November 2012, the Monitor brought an RFD seeking orders to facilitate its investigation of Bronstein as well as the removal of Bronstein from any participation in the IAP.

[52] The November 2012 RFD eventually resulted in the parties consenting to the 2013 Order. Pursuant to this order, Bronstein agreed to facilitate the Monitor's investigation of its practice. Bronstein also agreed to submit its IAP practice to

review. Specifically, the 2013 Order obliged Bronstein to retain a Practice Advisor. Bronstein was to work with this individual to establish a plan for the completion of its remaining IAP claims in a manner that takes into account the "best practices" for handling IRS claims published by the Law Society of Upper Canada ("LSUC") as well as those issued by the Chief Adjudicator.

(f) Subsequent concerns raised about Bronstein's IAP practice

[53] Subsequent to the 2013 Order, the Monitor continued to have concerns with Bronstein's IAP practice. These concerns were the subject of my decisions which are cited at 2014 BCSC 1550 and 2014 BCSC 1940. As such, I only intend to provide a summary of these issues in this decision.

[54] Upon reviewing the disclosure that it received pursuant to the 2013 Order, and its interview of Bronstein (which took place on December 4 and 6, 2013 as well as February 13, 2014), the Monitor identified several issues with Bronstein's IAP practice. These included the following:

a) the lack of contact that Mr. Bronstein has had with the IAP claimants that Mr. Johnny procured for Bronstein;

b) the lack of continuity of legal representation for these clients; and

c) Bronstein's relative lack of lawyers to assist in representing IAP claimants, which made it seem unlikely that it would complete all of its IAP files before the target completion date.

[55] As a result of these shortcomings, in June 2014, the Monitor brought a second RFD, initially seeking further orders mandating certain practices. During the course of submissions, the Monitor changed the relief that it sought and requested the transitioning of files to alternative counsel.

[56] At the initial hearing for the June RFD, I found that the evidence adduced by the Monitor raised serious issues regarding the adequacy of the representation received by Bronstein's IAP clients. Specifically, I found that the evidence

suggested that Bronstein had little contact with clients recruited by Mr. Johnny, meeting many of them only just prior to their IAP hearings. The structure of the firm also caused me concern, as Bronstein did not have a sufficient number of appropriately trained lawyers to deal with the volume of IAP clients that it had (at the time of that hearing, he only had two associates).

[57] I ordered that the initial hearing be adjourned so that Bronstein would have the opportunity to provide the court with assurances regarding how it would prosecute its remaining IAP claims in accordance with best practices. I also ordered that Bronstein's Practice Advisor, Patrick Poyner, provide the court with a report detailing how Bronstein would complete its remaining IAP claims, including a timeline of when the hearings would be completed, including the names of the lawyers attending each stage.

[58] In the interim, Bronstein hired an additional associate.

[59] On September 9, 2014, Mr. Poyner filed his report. In it, he concluded that Bronstein would be able to advance his clients' IAP claims in a manner consistent with IAP best practices. Important aspects of this plan included:

a) a workload where each lawyer conducts only 4 to 5 hearings per month;

b) sufficient preparation time before the scheduling of consecutive hearings;

c) at least two pre-hearing meetings for the clients with the lawyer conducting their hearing; and

d) signs of progress in the prosecution of the claims.

[60] In October 2014, I concluded that the proposed plan in Mr. Poyner's report was practical, and sufficient to satisfy the best practice requirements. However, I ordered that Bronstein continue to be under the court's supervision and that Mr. Poyner deliver another report by December 1, 2014.

[61] That brings us to the present hearing. The Monitor has not presented the Court with any evidence that Bronstein is failing to adhere to the terms of the above-discussed practice plan. In fact, essentially the only new evidence before the court on this hearing is Mr. Poyner's updated report that shows: (a) continued progress in the prosecution of the IAP claims; and (b) a hearing schedule that is consistent with IAP best practices.

[62] Mr. Poyner's report shows that since his September 2014 report, Bronstein & Company has:

a) brought 104 IAP files to hearing (reducing from 281 to 177 the total number of it files awaiting hearing);

b) moved 60 matters out of the document collection stage; these matters are now ready for a hearing (reducing from 117 to 57 the number of its files in the document decision stage); and

c) certified 22 claims (reducing the number of its claims awaiting certification from 31 to 9).[2]

[63] Each lawyer at Bronstein & Company continues to be scheduled for only 4 to 5 hearings per month (and only Mr. Bronstein attends 5 hearings per month). Further, the lawyer conducting a hearing is scheduled to meet with his or her client at least twice before the hearing: once no later than 60 days prior to the hearing and a second time a day or two before the hearing. Mr. Poyner's report notes that for the hearings scheduled in March and April, the lawyers completed the 60 day pre-hearing meeting in all but two of the files. Further, in reviewing the schedule of hearings, there is at a minimum, five days of preparation time before the scheduling of consecutive hearings.

[64] Further, Mr. Poyner reported on a February 4, 2014 meeting that he and Mr. Bronstein had with the Adjudication Secretariat where the Secretariat

2 These are subsets of the total of approximately 1,400 IAP claimants whom Bronstein has represented.

representatives "commented on the efficient manner in which Mr. Bronstein's claims were proceeding through their system and no concerns were raised".

(g) Loans to clients/assignment of settlement funds

[65] An additional allegation against Mr. Bronstein is in regard to his admitted practice of extending loans to his IAP clients that were secured against the clients' IAP awards, contrary to the IRSSA and s. 67 of the *Financial Administration Act*, both of which prohibit the assignment of amounts owing under the IRSSA.

[66] Between the period of April 2009 and October 2011, Mr. Bronstein made 158 loans to his IAP clients. The total amount loaned was $212,250. The overwhelming majority of these loans were in the range of $1,000-$2,000. In exchange for receiving these loans, Mr. Bronstein's clients would sign documents authorizing Bronstein to deduct the loaned amount from the settlement funds, once received. As the Monitor states, Mr. Bronstein used "an assignment of IAP funds" as security for these loans. Mr. Bronstein stopped providing these loans in November 2011, when he faced a complaint to the Law Society in regard to this practice.

[67] Mr. Bronstein's evidence is that he made these loans on request from his clients and that he did not charge interest (however, there are three instances in which he charged a $50 administration fee). Mr. Bronstein states that he did not provide loans as a client-recruitment mechanism. He points to the fact that he would only provide these loans once the clients had completed their hearings, and not at the beginning of the relationship, as evidence of his efforts to avoid the impression that he was "trying to induce somebody to become my client". In Mr. Bronstein's view, he provided these loans to help his clients.

[68] The Monitor concedes that there is no evidence in the record that Mr. Bronstein directly promoted this service, or that Mr. Johnny did so on his behalf.

[69] For his part, Mr. Bronstein states that he was not aware of the prohibition of assignments in IRSSA until the Chief Adjudicator issued a directive on third party loans in June 2011.

[70] Mr. Bronstein also states that this was the same time when he became aware of the British Columbia Supreme Court's 2007 decision and the Court of Appeal's 2008 decision in *Levesque*, a decision which clarified the prohibition on assignments in the IRSSA. However, Mr. Bronstein's evidence is that he did not believe that the decision in *Levesque* applied to his interest free loans because "they were of an entirely different nature to those dealt with by the court in the *Levesque* decision".

[71] Closely related to the loans made by Mr. Bronstein to his clients is the relationship between Bronstein and third party lenders. The Monitor has identified four instances in the record where Bronstein gave effect to assignments by paying settlement funds to third parties on the direction of its clients. Of these four, one was to direct payment to a third party lender, two were for payment of goods/services received by the client (*i.e.*, a car purchase and payment of services to a second lawyer) and one was to direct payment to an Indian band. Mr. Bronstein's uncontroverted evidence is that he did not receive any fee or benefit from these transactions.

[72] In addition, the Monitor raised concerns about the about conduct of Mr. Bronstein in relation to a third party lender named Fargo Bond Inc. ("**Fargo**"). Correspondence between the controller of Fargo, Warren Yake, and Mr. Bronstein suggest that four clients of Mr. Bronstein had taken out loans with Fargo and had secured these loans against the settlement proceeds that they were expecting. Mr. Bronstein's evidence is that these clients obtained these loans without his participation or consent. On June 20, 2011, just after the Chief Adjudicator issued his directive regarding third party loans, Mr. Bronstein had a telephone conversation with Mr. Yake wherein he informed him that he could not repay any of his clients' loans in light of the Levesque decision.

[73] However, the Monitor argues that the documents suggest that Mr. Bronstein may have participated in a scheme to circumvent the prohibition against assignment with respect to at least one of clients. The Monitor argues that an exchange of letters that occurred in October and December 2011, suggests an arrangement

whereby Mr. Bronstein would advise Mr. Yakes when the settlement funds were paid and hold the loan portion of these funds in trust until such time as Fargo (or an affiliated company) could obtain a garnishing order. In actuality, in December 2011, Mr. Yakes caused the lender to bring an action against one of these four clients and he caused the court to issue a garnishing order against Bronstein & Company in the amount of approximately $33,000.

[74] During his interview and in his most recent affidavit, Mr. Bronstein denies that he had ever agreed to such an arrangement with Mr. Yakes. Mr. Bronstein's evidence is that he did "everything in [his] power" not to participate in the repayment of these loans. However, once he was served with the garnishing order, Mr. Bronstein believed he was required to comply.

[75] Ultimately, the Monitor concedes that it is "unclear" whether anything was agreed between Mr. Yakes and Mr. Bronstein.

Positions of the Parties and Intervenors

(a) Monitor

[76] The Monitor argues that on the balance of the evidence in this application, the court should make an order removing Bronstein from participation from the IAP. In the alternative, it seeks orders ensuring that the IAP practice of Bronstein will continue to be under the court's supervision.

[77] The Monitor also takes the position that Bronstein should reimburse Canada for the costs of its investigation. Finally, it also requests that the court direct a process whereby the liability of Bronstein to clients whom Mr. Johnny extorted can be determined.

(b) Bronstein

[78] Bronstein takes the position that although there were failings in its IAP practice and in its conduct more generally, the evidence does not justify its removal from the IAP.

[79] It also takes the position that the court lacks the jurisdiction to order it to pay the costs of the Monitor's investigation. Similarly, it argues that the court lacks the jurisdiction to direct a process whereby Bronstein's liability to former clients can be determined.

(c) Canada

[80] Canada supports the Monitor's request that Bronstein be removed from the IAP and that it be required to pay the costs of the investigation into its conduct to date.

(d) Other Interveners

[81] The National Consortium ("**NC**") initially took the position that Bronstein should not be removed from the IAP but that certain conditions apply to its practice. However, during oral submissions the NC advised that because of Bronstein's conduct in defending its position in these proceedings that it had changed its position and would be seeking the removal of Bronstein from the IAP.

[82] The Tsilhqot'in National Government agrees with the position of the Monitor and likewise seeks the removal of Bronstein from the IAP.

[83] The Assembly of First Nations also supported the Monitor's request to remove Bronstein from the IAP.

[84] Independent Counsel's position gained clarity during oral submissions, when it advised that in light of the last affidavit that Mr. Bronstein swore in support of Bronstein's response to this RFD that it also felt that the appropriate remedy was Bronstein's removal from the IAP.

Analysis

[85] There are essentially three issues raised in this application:

a) Should the court exercise its jurisdiction to remove Bronstein from any and all further participation from the IAP?

b) Should Bronstein reimburse Canada for the costs the Monitor's investigation (and if so, what process should be employed)? and

c) Should the court direct a process that will allow IAP claimants to seek compensation from Mr. Johnny/Mr. Bronstein?

(a) Should this Court remove Bronstein from participation in the IAP?

(i) Relevant Considerations

[86] None of the parties takes any issue with this Court's jurisdiction to remove Bronstein from participation in the IAP. All of the parties agree that the relevant principles guiding such a decision are found in my decision in *Fontaine v. Canada (Attorney General)*, 2012 BCSC 839 (the "***Blott* Decision**"). This decision dealt with the Monitor's request that, among other forms of relief, Mr. David Blott and his law firm be removed from participation in the IAP on account of deficiencies in his practice as well as his relationship with a form filler/client referral firm and companies making loans to his IAP clients.

[87] While I do not intend to summarize my reasons in that decision, the main principles in the *Blott* Decision, which all of the parties to this matter appear to accept as governing, are as follows (paragraph numbers to the *Blott* Decision in parenthesis):

a) pursuant to s. 12 of the *Class Proceedings Act* (the "**CPA**") and the terms of the Implementation Order of the IRSSA, the court has a supervisory role over the administration of the IRSSA (paras 112/113);

b) this supervisory jurisdiction extends to the relationship between class members and their counsel, especially where there is evidence of a particular vulnerability (para 122);

c) as part of this jurisdiction, courts may sever the solicitor-client relationship where "circumstances dictate that it must be done". However, this must be considered "an extraordinary exercise" of the jurisdiction (para 123);

d) in exercising this jurisdiction, courts can fashion a broad range of remedies; however, the jurisdiction should be exercised "with restraint" (para 127);

e) the purpose of this supervisory jurisdiction is to ensure that legitimate claims are compensated to the full extent available under the Settlement Agreement's terms; the process by which those claims are adjudicated has the integrity, impartiality and transparency expected of other court processes; and that IAP claimants have the opportunity to have their claims adjudicated in a non-confrontational process (paras 130/131); and

f) courts should only exercise their jurisdiction to sever the solicitor client relationship where these purposes cannot be achieved by more limited intervention (para 133).

[88] Therefore, according to the *Blott* Decision, counsel should only be removed from the IAP if such removal is necessary to achieving the above-noted objectives. If any lesser measures will achieve this goal, they should be adopted instead.

[89] As a reference point, in the *Blott* Decision, the following factors led me to conclude that it was in fact necessary that Blott be removed from the IAP:

a) my finding that based on his previous conduct, continual supervision of Mr. Blott would not be sufficient to resolve the persistent "attitudinal problems" of Mr. Blott;

b) the fact that there was no evidence of Mr. Blott reforming his practice in the past;

c) Mr. Blott's "propensity for misstatement", including in regard to the disclosure of the relationship between his firm and Honour Walk (the third party referral service that received compensation of approximately $6 million from Blott and his firms as a result of its provision of this service);

d) evidence demonstrating Mr. Blott's knowledge of the prohibition against assignment of settlement funds and his participation in a scheme meant to circumvent that prohibition (in total, Mr. Blott facilitated loans totaling more than $1.4 million); and

e) Mr. Blott established an IAP practice that was devoid of many of the ordinary hallmarks of the solicitor-client relationship; as I noted in that decision:

> It is undeniable that Blott's operations were designed to maximize economies of scale. To the extent that lawyers were required by the Settlement Agreement for only two steps in the IAP (i.e. certification of applications and hearings), their time was spent exclusively on those two aspects of claims, while all other steps appear to have been completed by non-lawyer staff. There can be no doubt that IAP claimants were, in the system established by Blott, treated not as individual people who had in many cases suffered traumatic personal experiences at a very early age, but rather as claims, requiring little lawyer interaction.

(ii) Bronstein's failings

[90] There are three categories of failings that the Monitor is relying on to support its recommendation that Bronstein be removed from the IAP, namely:

a) Bronstein's deficient supervision of Mr. Johnny and his failure to adequately respond to allegations of wrongdoing by Mr. Johnny;

b) Bronstein's practice of extending secured loans to its IAP clients and its relationship with third party lenders; and

c) the nature and organization of Bronstein's IAP practice.

[91] The evidence suggests that Mr. Bronstein did not provide adequate supervision to Mr. Johnny, or other form fillers affiliated with his firm (there was also evidence about Bronstein employing the services of Mr. and Ms. First Rider and Mr. Earl Grinder). The fact that Mr. Bronstein experienced such difficulties in clearly articulating exactly what services these form fillers provided to his firm demonstrates the degree to which he failed to adequately supervise them.

[92] Bronstein abandoned its responsibility to properly complete its clients' IAP forms. The obvious inadequacies in these documents point to the reality that they were drafted by Mr. Johnny and submitted without being carefully reviewed by Mr. Bronstein before they were certified. This conclusion is strongly suggested by IAP adjudicator Michael Bay's observations that several of the Bronstein IAP forms used "common phraseology" as well as the fact that the applications were generally very short, contrary to the instructions provided.

[93] To be clear, there is nothing *per se* objectionable about Mr. Bronstein's use of "form fillers". When used properly, including sufficient training and supervision, such individuals can provide an important service in the implementation of the IRSSA. A for filler's role can be akin to that of a community liaison. What is problematic is when the job of the lawyer is performed by the form filler.

[94] Also, Mr. Bronstein irresponsibly granted Mr. Johnny unsupervised access to his clients. He acknowledged that he was aware of the additional services that Mr. Johnny provided to Bronstein's clients; however, there is no evidence that he ever questioned or considered whether Mr. Johnny had the requisite skills or training to provide such services. Also, the non-compensatory benefits from the Settlement Agreement (such as explaining health supports made available to class members by the IRSSA) were not adequately ensured. Mr. Bronstein abdicated that to Mr. Johnny and left Mr. Johnny's supervision to staff members who were themselves either unqualified for the role, poorly supervised or unsupervised.

[95] The undisputed evidence was that in the year that passed from February 2011 to February 2012, Mr. Bronstein received 9 complaints regarding Mr. Johnny's conduct. Yet there is little evidence of Mr. Bronstein's efforts to follow up with the clients harmed by Mr. Johnny. There is no evidence that Mr. Bronstein took any measures to correct these issues. In fact, Mr. Johnny was only removed from Mr. Bronstein's IAP practice after the Chief Adjudicator reported Mr. Johnny to the authorities and Mr. Johnny was re-incarcerated. It was these proceedings that brought an end to Mr. Johnny's involvement; not anything Mr. Bronstein did.

[96] In fact, not only is there no evidence of efforts made by Mr. Bronstein to follow up with his clients and address Mr. Johnny's conduct, there is evidence that Mr. Bronstein actually discounted his clients' complaints against Mr. Johnny. In the affidavit sworn for this proceeding, Mr. Bronstein revealed that he discounted these allegations because of his knowledge that the clients raising the complaints suffered from alcoholism or mental illness. Far from identifying these problems as reasons to be concerned and follow up with these clients, Mr. Bronstein used these illnesses as a reason to discredit his clients. Further, in doing so, Mr. Bronstein may also have breached these clients' privilege. [3]

[97] Mr. Bronstein's failing with regard to his supervision of his staff facilitated Mr. Johnny's allegedly extortive behaviour. Mr. Bronstein must bear responsibility for this. For instance, because of his inadequate supervision and the inadequacy of the procedures that he established, Mr. Bronstein never received Ms. Quilt's initial complaint regarding Mr. Johnny's behaviour in November 2009. Mr. Bronstein's explanation raises further concerns: during his interview with the Monitor he noted that when he was travelling to hearings that he would go "days at a time" without checking email or contacting his office to check in. He stated that he had no mechanism in place for the person receiving his emails to advise him of important news or to otherwise review the emails that were addressed to him. He delegated this most basic of responsibilities and then failed to supervise the employee to whom it was delegated.

[98] Another critical example is Mr. Bronstein's failure to supervise his bookkeeper and review Mr. Johnny's "invoices". This shortcoming meant that he missed red flags from the very start of his involvement with Mr. Johnny. Even a summary review of these invoices, the amounts that Mr. Johnny was claiming and the types of services that he claimed to be providing should have been enough to raise concern in any cautious solicitor. There is no excuse for Mr. Bronstein's failure to inquire.

[3] I was advised in the course of submissions by counsel for Mr. Bronstein that Mr. Bronstein had been concerned not to breach solicitor-client privilege and he had advised Mr. Bronstein that he was not breaching the privilege in swearing the impugned affidavit. As such, Mr. Bronstein did not breach solicitor-client privilege in the cavalier, self-interested manner that opposing counsel attributed to him. Nonetheless, his failure to investigate and preference to Mr. Johnny because of his client's personal circumstances is a significant issue.

[99] While problematic, the issues regarding Mr. Bronstein's secured loans to his clients are less concerning. To be clear, Mr. Bronstein's conduct in granting these loans was contrary to the IRSSA and the *Financial Administration Act*. Both clearly prohibit the assignment of settlement funds, which is a form of Crown debt. Section 18.1 of the IRSSA states that:

> No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement.

[100] Similarly, s. 67 of the *Financial Administration Act* prohibits the assignment of any Crown debt:

> 67. Except as provided in this Act or any other Act of Parliament,
>
> (a) a Crown debt is not assignable; and
>
> (b) no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt.

[101] However, whether Mr. Bronstein's interest free loans would engage the rationale for this prohibition is less clear. The British Columbia Court of Appeal's decision in *Fontaine v. Canada (Attorney General)*, 2008 BCCA 329 ("***Levesque***") dealt with this issue, and it noted the following at paragraph 36:

> It is not beyond human experience that a compensation scheme broadcast widely (as was this one) would attract people seeking a share of the proceeds in arrangements such as these. I think it may be safely said that one purpose of s. 18.01 was to limit the potential for the class members to be fleeced of their funds, or any portion of them, before they were received by the individual.

[102] The factual matrix under which *Levesque* was decided brings added context to these words, as that case was concerned with high interest loans made by third party settlement lenders.

[103] There is no evidence that Mr. Bronstein benefitted personally from these loans (except for the three cases where he charged administration fees). Mr. Bronstein's loans did not "fleece" any of the claimants of their funds.

[104] The fact that Mr. Bronstein continued to receive payment under the loans past the date when he alleges that he appreciated the prohibition on assignments is problematic. However, the issue is whether this fact makes it necessary that Mr. Bronstein be removed from the IAP – and it is not clear that it should.

[105] The issue regarding Bronstein's relationship with Fargo is potentially more troubling, but at this point the evidence does not demonstrate that Bronstein participated in a scheme meant to circumvent these prohibitions. However, the court continues to have some concerns with this relationship and I will deal further with it below.

[106] Finally, with regard to the structure and the nature of Bronstein's IAP practice, the evidence suggests that prior to the court's intervention, Bronstein did not meet the best practices established by the LSUC or Chief Adjudicator. Bronstein devoted inadequate resources to its practice; it lacked the basic infrastructure to meet the standards required of a legal professional. This is seen in the lost emails containing complaints about Mr. Johnny that Mr. Bronstein allegedly never received as well as the fact that there was no procedure in place to bring correspondence to Mr. Bronstein's attention.

[107] As detailed in my above-referenced decisions on Bronstein's IAP practice, prior to this court's involvement, the failings were also more fundamental in nature. As I noted there was a "serious issue" about the spectre of inadequate representation. Similarly to the *Blott* Decision, the IAP practice established by Bronstein seemed to lack the "ordinary hallmarks" of a solicitor-client relationship. There was a lack of contact between Mr. Bronstein and his clients. The evidence suggests that Mr. Bronstein was not involved in drafting the IAP application forms and that for at least some claimants, their only meeting with Mr. Bronstein was just prior to their hearing. There was also a lack of continuity of representation that in the context of IAP claims is particularly concerning, as clients would potentially be revisiting clearly horrific memories on several occasions as they were required to meet with other lawyers.

[108] In general, the evidence suggests that Bronstein had too many IAP clients and not enough associate lawyers to adequately represent each of his clients. The fault for this lies squarely with Bronstein. As the LSUC guidelines as well as those of the Chief Adjudicator make clear, it is the lawyer's responsibility to recognize his or her limitations and to avoid taking on clients whom he or she cannot not responsibly serve. As the Chief Adjudicator's guidelines make clear: "Lawyers must restrict their IAP practice to the number of cases they can competently and responsibly take on at any one time".

[109] The record is clear that these issues continued to exist after the 2013 Order. Mr. Bronstein only began to take measures to correct these failings after two years and as a result of significant court intervention.

[110] However, the evidence suggests that Bronstein has in fact revised its practice and is currently providing adequate service to its clients. As I reviewed in *Fontaine v. Canada (Attorney General)*, 2014 BCSC 1940, the practice plan established by Mr. Poyner and Mr. Bronstein is in accordance with IAP best practices – it calls for at least two pre-hearings, continual status updates and ensures that the firm has the appropriate level of resources to respond to the demands that it faces.

[111] Further, there is no evidence to suggest that Bronstein is failing to adhere to this practice plan. To the contrary, the results thus far have been promising. Since September 2014, more than 100 IAP files have been brought to hearing and the evidence regarding the remaining files suggests that they are progressing as well.

[112] In addition, together with Mr. Poyner, Bronstein has also developed a practice plan to avoid missing important correspondence.

[113] The court does not lose sight of the fact that this is primarily the result of its intervention; however, it cannot deny that Bronstein has revised its practice and that this has likely resulted in beneficial effects for its clients.

(iii) Conclusion

[114] The evidence leads me to the conclusion that Mr. Bronstein has failed to meet the standards expected of a legal professional owing fiduciary duties to his or her clients. This is clear in both the practice that Bronstein established and in his response to the allegations regarding Mr. Johnny. Mr. Bronstein failed to exercise sufficient diligence before deciding to work with Mr. Johnny and allowing Mr. Johnny access to Bronstein's clients. Afterwards, Mr. Bronstein failed to adequately supervise Mr. Johnny. When he began to receive allegations about Mr. Johnny, Mr. Bronstein failed to appropriately investigate those complaints and thus failed to protect Bronstein's clients. While Mr. Bronstein can point to some evidence to demonstrate that he did respond to each complaint, as well as to explain his alleged belief that the complaints were untrue, ultimately, Mr. Bronstein's responses were insufficient and did not meet the standard expected of a prudent and competent lawyer.

[115] However, the issue is not whether Bronstein's conduct was improper and blameworthy. It was. The issue is whether its conduct was so improper that it is necessary to remove it from participation in the IAP in order to ensure that:

a) legitimate claims are compensated to the full extent;

b) the process by which those claims are adjudicated has the integrity, impartiality and transparency of other court processes; and

c) IAP claimants have an opportunity to have their claims adjudicated in a non-confrontational process.

[116] I have concluded that it was not. Contrary to the situation in the *Blott* Decision, Bronstein has demonstrated a capability to reform its practice. Bronstein has demonstrated that with continual supervision, it can provide service to its clients that is consistent with IAP best practices. Further, while Mr. Bronstein's response has in several respects been wanting, there is no evidence of outright misstatement as there was in the *Blott* Decision. There is no evidence of Mr. Bronstein

participating in any scheme meant to provide him with additional income (*i.e.*, outside of his legal fees) as there was with Mr. Blott.

[117] Ultimately, this application required the court to exercise its judgment in a very difficult context. At the forefront of my consideration is the fact that Bronstein still has over 150 IAP clients with outstanding claims. Given the improvements that Bronstein has demonstrated, the evidence provided by the Monitor has not convinced me that at this point in the pursuit of their claims, it would be in the claimants' best interests to force them to seek new counsel. There is nothing that suggests that continuing to be represented by Bronstein will prevent these individuals from being compensated to the full extent, or enjoying a process that has the integrity of a court process or that otherwise would prevent them from having their claims adjudicated in a non-confrontational process. Bronstein will continue to be permitted to participate in the IAP, but only if it (a) adheres to the practice plan developed by Mr. Poyner and (b) continues to retain Mr. Poyner, who is to provide the Monitor with quarterly updates on Bronstein's progress in prosecuting its clients' IAP claims.

[118] This is not to say that this court is content with Bronstein's conduct or that it does not continue to have questions. Bronstein's conduct has caused the Monitor and Canada to spend considerable resources in order to investigate his conduct and to bring his conduct in line with best practices. As will be further explained below, Mr. Bronstein must reimburse Canada for these costs.

[119] Further, the court continues to have questions regarding the relationship between Bronstein and Fargo. The suggestion that Bronstein may have participated in a scheme intended to circumvent the protections in the IRSSA is precisely the type of concern that would lead the court to conclude that Bronstein's removal is necessary. Bronstein is required to address these concerns by providing to the Monitor all documents, records, correspondence and any record of communications containing the words "Fargo", "Yake", "Settlement Lenders" or "1607590 Alberta Inc.".

(b) Should Bronstein reimburse Canada for the costs of the Monitor's investigation?

[120] When dealing with the reimbursement for the costs of the Monitor's investigation in the companion to the *Blott* Decision, *Fontaine v. Canada (Attorney General)*, 2012 BCSC 1671 (**"*Blott #2***"), I observed that the costs of the Monitor's investigation "are not, strictly speaking" costs as normally understood in civil litigation. That is, the Monitor and Canada are not looking for Mr. Bronstein to pay "party and party costs". This application occurs within the *Fontaine v Canada* class proceeding. Mr. Bronstein is counsel to several class members. Canada seeks reimbursement for the expense of the investigation into his practice.

[121] As such, I reject Bronstein's counsel's submissions that s. 37 of the CPA governs the decision of whether to order that Bronstein reimburse Canada for the costs of the investigation. That section, which clearly does deal with circumstances where one party seeks costs from another, does not apply.

[122] Instead, the costs of the Monitor's investigation are one of the "various contingencies" which call into operation the court's jurisdiction to order costs against a lawyer. As I noted in *Blott #2*, at paragraph 56:

> One of those [*i.e.*, "various contingencies"] surely arises in the context of defendant-funded class action settlement administrations. Here, Canada is obliged to fund the operations of the Monitor at first instance. The Monitor has been, in turn, appointed to oversee and ensure the integrity of the process. Where expenses are incurred as a result of an extraordinary investigation into the misconduct of counsel, I see no reason to deny Canada the right to seek recovery of those costs where the investigation establishes that there has indeed been misconduct.

[123] Mr. Bronstein contends that the court's supervisory jurisdiction under the IRSSA does not grant it the jurisdiction to grant such costs. Counsel to Mr. Bronstein takes the position that because the Implementation Order already provides that Canada will pay the Monitor's costs, permitting a costs award against his client would be tantamount to an amendment to the IRSSA.

[124] There are two problems with this argument: (i) it confuses the Implementation Order with the IRSSA; and (ii) it requires a very strict construction of the IRSSA that is contrary to the purposive approach to contractual interpretation applicable to the IRSSA (see *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941). In this regard, Canada's position is preferable and likely more consistent with the intentions of the parties, namely, that the IRSSA:

> .. does not impose financial obligations upon Canada to fund the supervision and investigation of lawyers who represent IAP claimants. Canada submits that it should not be required to assume such obligations which flow directly out of the misconduct of the Bronstein Parties.[4]

[125] In my view, the authority to order payment of the expense of an investigation is a necessary corollary of the court's supervision of the IRSSA's implementation (paragraph 23 of the Implementation Orders.)

[126] In terms of the type of conduct that will merit an order of special costs as against a solicitor, in *Blott #2*, I canvassed the relevant authorities and noted that "reprehensible conduct" was necessary. More recent decisions have noted that special costs are appropriately awarded to penalize conduct from which a court seeks to dissociate itself.[5]

[127] Bronstein's conduct in this matter reaches this threshold. As detailed above, by failing to devote adequate resources to ensure that his firm could handle the volume of clients that it had, Bronstein established a practice that exposed its clients to harm. Further, when he was made aware of this harm, Mr. Bronstein failed to implement adequate measures in response. Finally, Bronstein only moved to revise his practice in the course of 2 years of investigation and several applications: that is, the record suggests that without the Monitor's investigation and this court's involvement, Bronstein's practice would still fail to meet IAP best practices and its clients would still be at risk.

[4] Written Submissions of the Attorney General of Canada, paragraph 37.
[5] *Pierce v Jivraj*, 2014 BCSC 926, at para 20.

[128] However, despite the above, counsel for Bronstein rightly raises some questions regarding the amount that the Monitor seeks for the costs of its investigation. The amount claimed by the Monitor may be disproportionate. Because of the unusual context in which it arises, I will seize myself of this issue.

[129] The parties will adhere to the following procedure to determine the amount of costs for which Bronstein will be liable:

a) within 20 days of the release of these reasons the Monitor is to provide me with a detailed breakdown of its accounts, noting:

   i. the amount spent on lawyer fees, including a detailed breakdown of the hours spent by each lawyer, including a description of how this time was spent; what time was spent in court appearances and related matters and what on the investigation itself; and

   ii. the amount spent on other staff members;

b) at the same time that the Monitor provides its account, it shall also provide me with any submissions that it wishes to make in regard to the accounts, such submissions to be no more than 10 pages in length;

c) Canada may provide responding submissions within 10 days of receiving the Monitor's accounts and submissions (such submissions to be no more than 10 pages in length); and Bronstein may provide responding submissions within 10 days of receiving Canada's response (also to be no more than 10 pages in length); and

d) the Monitor may provide reply submissions within 5 days of receiving Bronstein's responding submissions such submissions to be no more than 5 pages in length).

[130] I have taken this approach in an effort to save the parties the time and expense of a reference to the registrar. The parties may also make submissions as to the appropriateness of the proposed procedure.

(c) Should this court direct a process that will allow IAP claimants to seek compensation from Mr. Johnny/Mr. Bronstein?

[131] Three of Bronstein's former clients have provided evidence for this application that Mr. Johnny took portions of their settlement funds. The Monitor has requested that I direct a process whereby the issue of liability of Bronstein and Mr. Johnny can be determined and where these may receive some compensation. The Monitor also provided a form of pleading that would serve as the basis of this proceeding.

[132] If the claimants wish to pursue the matter, the Supreme Court Civil Rules permit appropriate expedited processes. However, contrary to what is suggested in the Monitor's form of pleading, the Monitor is not authorized to bring actions on behalf of these individuals. There is no evidence before the court to suggest that these individuals are under any form of disability such that they would require a litigation guardian. These individuals, and not the Monitor, are the parties with the potential claims against Bronstein. Of course, none of the above would prevent these individuals from seeking out counsel who will represent them on a *pro-bono* basis.

[133] Should any or all of these individuals choose to bring an action, whether individually or jointly, I will seize myself or the process or processes for determining these claims. The claimants can be represented by one lawyer and, if they wish, the matter can be determined in one action. In any event, even if separate actions are started they could all be heard at the same time, given that there would be some degree of overlap between all three. The process(es) will be fair but expeditious. The trial(s) will take place in Williams Lake or whatever registry is closest to the claimants.

Disposition

[134] For the reasons set out above, the court is not convinced that it is necessary to remove Bronstein from the IAP. However,

a) Bronstein shall continue to retain Mr. Poyner (at Bronstein's own cost) and adhere to the practice plan that Mr. Poyner has developed;

b) Mr. Poyner shall provide the Monitor with quarterly updates reviewing the progress made by Bronstein in completing the outstanding IAP claims; and

c) the Monitor shall bring a RFD to this court should it have any concerns regarding the contents of Mr. Poyner's updates.

[135] Further, questions remain about the relationship between Bronstein and Fargo and the court considers it essential that all concerns be addressed. As such, Bronstein is to provide the Monitor with all documents, records, correspondence and any record of communications containing the words "Fargo", "Yake", "Settlement Lenders" or "1607590 Alberta Inc." within 30 days of the release of these reasons.

[136] Bronstein has caused Canada to incur costs investigating its conduct and Bronstein shall reimburse Canada for the reasonable costs of that investigation. Above, I have detailed the process for the parties to follow in order to determine the amount of these costs.

[137] Finally, and as provided for in paragraphs 132 and 133 above, I direct that should Bronstein's three clients who allege that Mr. Johnny took a portion of their settlement funds wish to pursue actions (whether jointly or individually), a trial or trials be conducted to determine Bronstein's liability in that respect.

"B.J. Brown J."