



This is the 1<sup>st</sup> affidavit  
of Reidar Mogerman in this case  
and was made on 05/APR/2017  
No. S-121627  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

LAWRENCE BRIAN JER, JUN JER AND JANETTE SCOTT

PLAINTIFFS

AND:

RASHIDA SAMJI, RASHIDA SAMJI NOTARY CORPORATION, SAMJI & ASSOC.  
HOLDINGS INC., AND SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA

DEFENDANTS

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

**AFFIDAVIT**

I, Reidar Mogerman, of 400 – 856 Homer Street, Vancouver, British Columbia, barrister and solicitor, SWEAR THAT:

1. I am a lawyer with the law firm of Camp Fiorante Matthews Mogerman, co-counsel for the Representative Plaintiffs in this proceeding together with the law firm of Bennett Mounteer LLP (collectively, “Class Counsel”), and as such I have personal knowledge of the facts and matters to which I have deposed hereinafter, save and except where the same are stated to be on information and belief, and where so stated I verily believe them to be true.

*The continued conduct of this action*

2. The background to this action, and the settlements previously reached in this action with the former Defendants to the action (the “Prior Settlements”), are described in the affidavit of Paul R. Bennett, sworn and filed on May 13, 2014, and the affidavit of R. J. Randall Hordo, Q.C., sworn and filed on May 26, 2014. These affidavits were sworn in support of applications to approve the Prior Settlements, which were approved by this Court by Orders made May 16, 2014 and May 30, 2014.

3. At the time the Prior Settlements were concluded and then approved by this Court, Class Counsel also pursued negotiations with counsel for the Defendant, Society of Notaries Public of British Columbia (the “Society”), concerning the potential settlement of Class members’ claims for compensation from the Special Fund, which the Society was required to maintain under s. 20 of the *Notaries Act*, R.S.B.C. 1996 c. 334, for losses suffered by Class members as a result of the money they entrusted to Rashida Samji for investment in the Mark Anthony Investment Scheme (the “Scheme”). These negotiations ultimately came to an end on June 13, 2014 when counsel for the Society advised that the Society wish to litigate, at the common issues trial set for the end of June, the certified common issue which addressed whether Rashida Samji had acted in her capacity as a notary public when she received funds from Class members for investment under the Scheme (the “Notary Issue”). The determination of the Notary Issue would determine whether Class members’ claims met the threshold criteria for compensation from the Special Fund.

4. The trial of the remaining common issues in this class proceeding, including the Notary Issue, was held on June 23 and 24, 2014. The only issue that was contested at the trial of the common issues was the Notary Issue.

5. On August 26, 2014, this Court pronounced Reasons for Judgment in which the Court determined that Rashida Samji was acting as a notary public when she received money from investors in the Scheme.

6. The Society appealed this determination of the Notary Issue. The Society's appeal was heard on May 1, 2015, and the appeal was dismissed by the B.C. Court of Appeal on June 5, 2015.

7. The Society applied for leave to appeal to the Supreme Court of Canada from the dismissal of its appeal by the B.C. Court of Appeal. The Society's application for leave to appeal was dismissed by the Supreme Court of Canada on January 21, 2016.

8. After the Society's application for leave to appeal was dismissed by the Supreme Court of Canada, Class Counsel applied for and obtained court approval of notice to the Class of the determination of the common issues. As part of the court approved notice, Class members were advised that if Class members wished to pursue individually their claim for compensation from the Special Fund maintained by the Society, instead of that claim being pursued collectively through the class proceeding, Class members were required to deliver a completed Election to Act Individually (the form of which was sent with the notice) to Class Counsel by June 30, 2016.

9. No Election to Act Individually was received by my office, and I am informed by Paul Bennett that no Election to Act Individually was received by his office, in response to the common issue notice.

### ***The settlement with the Society***

10. As the notice of the determination of the common issues was issued, Class Counsel resumed negotiations with the Society. These negotiations focused both on the amount the Society would contribute to settle claims against the Special Fund and the structure of that settlement.

11. In terms of structure, the Society insisted that any settlement must be a settlement of all claims against the Special Fund by all investors in the Scheme, not just a settlement of the claims of those investors who were Class members in the class proceeding. If this could not be achieved, the Society advised that it was prepared to implement a process whereby individual investors would present their claim for compensation to the Society.

12. In terms of amount, the Society did not consider itself obliged to exhaust the entire proscribed amount of the Special Fund that the Society was required to maintain to compensate persons who had suffered loss as a result of money entrusted to a notary, in the payment of claims for compensation by investors in the Scheme. The Society was of the view that it could reserve part of that proscribed amount of \$3 million to address other claims against the Fund. Class Counsel's position was that the statutory amount was simply a minimum amount the Society was required to maintain but did not limit the amount of the Society's potential liability.

13. In the course of settlement negotiations, counsel for the Society, Brian Poston, advised Class Counsel that counsel who formally acted for Coast Capital Credit Savings Union ("Coast Capital"), Rob Dawkins, was asserting claims against the Special Fund on behalf of certain investors who had been former clients of Coast Capital. These investors had been represented by the firm of Hamilton Duncan Armstrong & Stewart (the "HDAS Investors") in individual actions they had commenced against Coast Capital concerning their investments in the Scheme, which individual actions were settled contemporaneously with the claims against Coast Capital in the class proceeding. This development led us and counsel for the Society to conclude that some form of assignment of these investors' claims had been given to Coast Capital in the settlement of the individual actions against it.

14. The actual communications between counsel for the Society and Mr. Dawkins were not disclosed to Class Counsel during the settlement negotiations. Counsel for the Society did advise Class Counsel that a request had been made to Mr. Dawkins for production of the settlement agreements between Coast Capital and the HDAS Investors, and any assignments that may had

been made by the HDAS Investors. Counsel for the Society further advised Class Counsel in early December 2016 that Mr. Dawkins had advised that he was no longer acting for the HDAS Investors, and that no disclosure had been made to the Society of the requested settlement agreements or assignments.

15. Settlement negotiations proceeded between Class Counsel and counsel for the Society throughout 2016. Ultimately, in December 2016, counsel agreed in principle on the key terms of settlement. A formal Settlement Agreement was negotiated and settled between counsel in early January 2017.

16. I am advised by Brian Poston, counsel for the Society, that the Board of Directors of the Society approved the Settlement Agreement on January 24, 2017, in the exercise of their discretion under s. 20(1) of the *Notaries Act*, on the basis that the payment of compensation to investors in the Scheme pursuant to the terms of the Settlement Agreement provides for a fair, reasonable, and just compensation from the Special Fund to those investors.

17. I am advised by Paul Bennett that he reviewed the Settlement Agreement approved by the Society with the representative Plaintiffs in the week of January 24, 2017 and they approved the settlement.

18. The Settlement Agreement was dated for reference and executed on January 27, 2017 (the "Notaries Settlement"). A copy of the Notaries Settlement is attached as Exhibit "A" to the Affidavit of Stephanie Chan, sworn January 27, 2017.

19. The key terms of the Notaries Settlement are:

- (a) the Society will create a settlement fund of \$3 million, which is the full amount of the Special Fund the Society is required to maintain under s. 20(1) of the *Notaries Act*;

- (b) all investors in the Scheme who suffered a loss will be entitled to claim under the settlement, unless they have assigned their claim for compensation from the Special Fund; and
- (c) all investors who are entitled to claim against the Fund will received a pro-rata share of their settlement fund, based on the total amount of their net principal loss that they have suffered from their investment in the Scheme, after deducting payments they have received from Prior Settlements of claims raising out of the Scheme and any payments they have received from the Trustee in Bankruptcy of Rashida Samji.

*Notice and Responses*

20. On February 2, 2017, the B.C. Supreme Court approved the issuance of notice to all investors in the Scheme, in the manner set out in paragraph 3 of the Notaries Settlement and in substantially the form as Schedule "A" to the Notaries Settlement, as modified and approved by the B.C. Supreme Court.

21. I am informed by Paul Bennett that his office issued notice to all investors in the Scheme on February 10, 2017, in the manner and in the form approved by the Court on February 2, 2017.

22. In response to the Notice, in early March 2017, counsel for the HDAS Investors objected to the inclusion of the HDAS Investors in the Notaries Settlement on the basis that the investors wished to conclude their own settlement with the Society.

23. In the course of further communications between Class Counsel and counsel for the HDAS Investors concerning their objection, counsel for the HDAS Investors disclosed the term of the settlement agreements between the HDAS Investors and Coast Capital concerning their

claims for compensation from the Society. Attached as Exhibit "A" to this Affidavit is a redacted copy of two pages from one of those settlement agreements setting out that term, which counsel for the HDAS Investors advised was the same in each of the settlement agreements reached between the HDAS Investors and Coast Capital.

24. Subsequently, it was agreed between Class Counsel, counsel for the HDAS Investors and counsel for the Society that:

- (a) the Society will enter into a separate settlement agreement with the HDAS Investors to settle their claims for compensation against the Society arising out of their investments in the Scheme for the amount of \$352,200, which amount represented the pro-rata percentage share of the HDAS Investors of the \$3 million settlement fund under the Notaries Settlements, based on the percentage which results from dividing the net principal loss of the HDAS Investors by the total net principal loss of all investors in the Scheme; and
- (b) the Notaries Settlement would be amended to reduce the settlement fund by the amount to be paid to the HDAS Investors and to exclude the HDAS Investors from the scope of the settlement.

25. Class Counsel concluded it was appropriate to reach the above agreement concerning the HDAS Investors because:

- (a) it did not appear from a review of the HDAS Investors' agreement with Coast Capital concerning their claims for compensation from the Society that this agreement would preclude the HDAS Investors from claiming compensation from the Society, either generally or pursuant to these specific terms of the Notaries Settlement, given that Coast Capital had abandoned its rights under this term of its settlement agreements with the HDAS Investors; and

- (b) as the HDAS Investors would receive only their proportionate share of the settlement fund under the Notaries Settlement, and that the settlement fund would only be reduced by that proportionate amount, the remaining investors would receive the same proportionate amount of the \$3 million settlement fund as they would have received had the HDAS Investors remained part of the Notaries Settlement.

26. In addition to the objection raised by the HDAS Investors, David Sutherland, counsel for several other Opt-Out Investors who had actions outstanding against the Society and other parties, raised the concern that the release of his clients' claims against the Society, as provided for by the Notaries Settlement, would prejudice his clients' claims against the remaining parties to their actions. To address this concern, Class Counsel and Society agreed that the Order approving the Notaries Settlement would provide that there would be no release of the Society by investors who had outstanding actions against the Society, and who had agreed with the Society to dismiss those actions in exchange for covenant to sue in a form acceptable to the Society.

27. Attached as Exhibit "B" to this Affidavit is a copy of the Amending Settlement Agreement, dated for reference April 4, 2017, implementing the amendments described above.

***The Notaries Settlement is fair and reasonable***

28. It is Class Counsel's view that the Notaries Settlement as amended is fair, reasonable and in the best interest of the Class and the other investors in the Scheme entitled to claim under the settlement, for several reasons. First, there was a significant litigation risk that if investors' claims for compensation from the Special Fund were litigated with the Society, then the Society would not be required to exhaust \$3 million amount of the Fund that the Society is required to maintain by the *Notaries Act* in payment of claims for compensation arising out of the Scheme. In short, there was a significant litigation risk that the total amount paid out by the Society, if investors' individual claims were pursued through litigation, would be less than the total amount paid by the Society under the Notaries Settlement, as amended.



29. Second, while there was a reasonable prospect a court may conclude that the Society's liability to pay compensation under s. 20 of the *Notaries Act* was not limited to the proscribed amount, another reasonable construction of s. 20 was that the proscribed amount functions like the limits on an insurance policy for any incident involving a notary for which compensation could be claimed from the Special Fund. If this construction of s. 20 prevailed, this would mean that the investors would do no better in pursuing litigation with the Society than the results achieved under the Notaries Settlement.

30. Third, even if the Society's liability to pay compensation from the Special Fund was not limited to the proscribed amount of the Special Fund, there is some uncertainty as to the extent to which additional funds could practically be recovered from the Society beyond the proscribed amount. Counsel for the Society advised Class Counsel during the negotiation that the Special Fund is funded by members of the Society. This means that payments beyond the proscribed amount of the Special Fund would have to be funded through assessments by the Society of its members. The website of the Society currently shows that there are 346 notaries on the roll maintained by the Society. There is obviously some practical limit upon the ability of these 346 members to fund substantial amounts beyond the proscribed amount of the Special Fund, which members of the Society must replenish once it is exhausted.

31. Fourth, a process under which investors are required to present claims individually to the Society would be, in my view, both inefficient and lead to greater delay in the delivery of compensation to investors. Apart from the inefficiencies and delay inherent in an uncoordinated process where individual claims are presented to the Society for its consideration, there is a real risk that in such a process the Society would not pay out any individual claim until all claims from investors in the Scheme have been presented to and considered by the Society, so that the Society could assess the amount of compensation to be paid to any particular investor in the context of the total claims presented. This would likely significantly delay the payment of compensation to investors.

32. In contrast, the Notaries Settlement provides for a simple and straight forward claims process. Once initiated, the claims process should result in the payment of compensation to claiming investors within 5 to 6 months under the time frame set out in the Notaries Settlement.

33. Fifth, the Notaries Settlement as amended, treats all investors fairly and equally. All investors who suffered a loss of funds they invested in the Scheme (and who have not assigned their claim for compensation from the Special Fund) are entitled to a pro-rata share of the settlement fund paid by the Society, based on the proportionate share that their net principal loss bears to the total amount of net principal loss suffered by investors claiming under the settlement. Under the settlement, the amount of each investor's net principal loss is calculated as the amount of their principal loss as determined by the Trustee in Bankruptcy for Rashida Samji, less any payments received by the investor in respect of claims advanced concerning their investment in the Scheme and any payments received by the investor from the Trustee in Bankruptcy. This is a fair and equitable means of determining each investor's entitlement to payment from the settlement of their claims for compensation from the Special Fund.

34. For all the above reasons, Class Counsel is of the view that it is in the best interest of all investors in the Scheme to have their claims for compensation from the Special Fund resolved under the terms of the Notaries Settlement.

*Legal fees and disbursements*

35. Class Counsel's fee arrangements are set out in paragraphs 68 and 69 of the affidavit of Paul Bennett sworn May 14, 2014, and Class Counsel's retainer agreement is attached as Exhibit "E" to that affidavit. By Order made May 30, 2014, this Court approved the payment of legal fees payable in respect of the Prior Settlements pursuant to this fee arrangement.

36. As set out in paragraph 69 of the Bennett affidavit, Class Counsel's retainer arrangements provide that Class Counsel would receive up to a maximum of 25% of the value of

any settlement obtained at any time up to 60 days before trial, and up to a maximum of 33.3% of the value of the settlement or judgment obtained thereafter. As the Notaries Settlement was concluded after the common issues trial in which the Notary Issue was determined, and after the resolution of all appeals from that determination, Class Counsel proposes that the legal fees payable for the Notaries Settlement be set at 30% of the settlement fund payable under the settlement, as amended, which is equal to \$794,340. This is the same percentage legal fee that was proposed by Class Counsel, and approved by the Court, for the Prior Settlements.

37. The information stated in the following paragraphs concerning the time incurred by Class Counsel in the conduct of this proceeding is based on my review of our firm's records and information provided to me by Paul Bennett.

38. Since the Order of May 30, 2014 approving the legal fees payable in respect of the Prior Settlements, Class Counsel has recorded time in this proceeding that has a value, at Class Counsel's standard hourly rates in effect at the time the services were provided, of \$446,507. Class Counsel estimates that approximately \$257,000 of this time was incurred in relation to the Notary Issue, the claim against the Society for compensation from the Special Fund and matters involving the Estate of Rashida Samji, all of which was for the general benefit of investors.

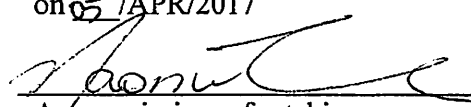
39. Some of the time expended in the class proceeding before June 1, 2014 would also have involved the Notary Issue and the Society. The Society was added as a Defendant so that Society could address whether the Notary Issue should be certified as a common issue. The Society participated in the certification hearing, and appealed the certification of the Notary Issue. The Society then made document production in the class proceeding, and participated in the mediation held April 2014 that ultimately led to the prior settlements.

40. In total, Class Counsel has currently recorded time with a value of \$1,999,108 in the conduct of this action. In total, Class Counsel has collected fees to date in respect of the claims

advanced in this action of \$3,246,197, and will have collected a total of \$4,040,537 in fees if the proposed fee of \$794,340 in relation to the Notaries Settlement is approved.

41. Class Counsel also seek recovery of \$9,759.40 in disbursements. These disbursements are detailed in Exhibit "C" to this Affidavit and are expenses that were incurred in relation to the Notary Issue and the claim against the Society. The largest expense is for professional fees charged by DLF Communications Ltd., who were retained to provide Class Counsel with a communications plan and media advice for the purpose of creating public pressure on the Society to provide compensation for the victims of Rashida Samji. In my view, these disbursements were reasonable and necessary for the determination of the Notary Issue and the pursuit of the claim for compensation from the Special Fund.

SWORN BEFORE ME  
at Vancouver, British Columbia  
on 05 / APR / 2017

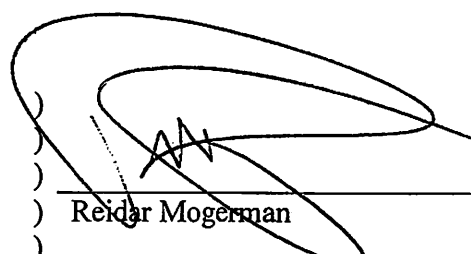
  
\_\_\_\_\_  
A commissioner for taking  
affidavits for British Columbia

**NAOMI KOVAK**

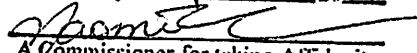
**BARRISTER & SOLICITOR**  
856 Homer Street, 4th Floor  
Vancouver, BC V6B 2W5

Tel: 604-689-7555 Fax: 604-689-7554

THIS AFFIDAVIT was prepared by the law firm of Bennett Mounter LLP, whose place of business and address for service is 14th Floor - Sun Tower Building, 128 West Pender Street, Vancouver, British Columbia, V6B 1R8. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett

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Settlement Amount –

This is Exhibit "A" as referred to in the  
affidavit of Reidar Moger  
sworn before me at Vancouver, B.C.  
this 3 day of April 2017  
  
A Commissioner for taking Affidavits  
within British Columbia

**Consent Dismissal Order, Assignment and Covenant Not to Sue**

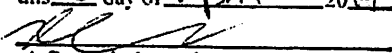
7. The Plaintiff Investor(s) hereby grants rights of carriage to Coast Capital, at its sole cost, discretion and authority, of any and all causes of action or entitlements to advance rights of recovery for the Loss as against the B.C. Society of Notaries Public, Special Compensation Fund (the "Special Fund"). To the extent that Coast Capital achieves any recovery through pursuit of claims against the Special Fund, then, Coast Capital will further share and distribute 50% of the net recoveries to the Plaintiff Investor(s) and 50% to be distributed for the benefit of Coast Capital. Coast Capital shall initiate such claims against the Special Fund as it deems appropriate within 60 days of the date of this Agreement. If Coast Capital elects not to pursue or to withdraw from further carriage and pursuit of the claims against the Special Fund for any reason, then on written notice by Coast Capital to the Plaintiff Investor(s) to be delivered to HDAS on or before August 15, 2014, Coast Capital shall withdraw from further carriage and pursuit of the claims to the Special Fund, all without costs, and all without any further right of contribution in favour of Coast Capital and shall relinquish all rights of carriage for any claim

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against the B.C. Society of Notaries Public to the Plaintiff Investors. If Coast Capital elects not to pursue or to cease pursuing the claims against the Special Fund for any reason, it will forego any right of contribution from the Special Fund that the Plaintiff Investor(s) achieve against the Special Fund.

#### **The Action**

12. Although the Plaintiff Investor(s) have agreed to a dismissal of the Action as against the Settling Defendants, the Plaintiff Investor(s) may continue the legal proceedings against the Non-Settling Defendants in the Action, or any other person or entity other than the Settling Defendants that are alleged to be negligent, liable or otherwise in breach of duty in connection with the Ponzi Scheme.

This is Exhibit "B" as referred to in the affidavit of Reidar Moger sworn before me at Vancouver, B.C. this 5 day of April 2017  
  
A Commissioner for taking Affidavits within British Columbia

**AMENDING SETTLEMENT AGREEMENT**

This Amending Settlement Agreement is dated for reference April 4, 2017 by and between the Plaintiffs, Janette Scott, Lawrence Brian Jer and Jun Jer (the "Plaintiffs"), in *Jer et al. v. Sanji et al.*, Supreme Court of British Columbia, Vancouver Registry No. S-121627 (the "Action") and the Society of Notaries Public of British Columbia (the "Society").

**WHEREAS:**

- A. The Plaintiffs and the Society have entered in to a Settlement Agreement dated for reference January 27, 2017 (the "Notaries Settlement");
- B. The defined terms in the Notaries Settlement shall have the same meaning when those terms are used in this Amending Settlement Agreement;
- C. Pursuant to an Order made by the B.C. Supreme Court in the Action on February 2, 2017, notice of the Notaries Settlement was given to all investors in the Scheme, in the manner set out in the paragraph 3 of the Notaries Settlement and in substantially the same form as Schedule "A" to the Settlement Agreement, as modified and approved by the B.C. Supreme Court;
- D. Those Opt-Out Investors who had previously been represented by the law firm of Hamilton Duncan Armstrong & Stewart (the "HDAS Investors"), in individual actions those investors commenced concerning their loss in the Scheme, objected to their inclusion in the Notaries Settlement on the basis that they wish to conclude their own settlement with the Society;
- E. The HDAS Investors and the Society have agreed to a settlement of the claims of the HDAS Investors against the Society for payment by the Society of \$352,200, which amount represented the pro-rata share of the HDAS Investors of the settlement fund contemplated by the Notaries Settlement, based on the percentage resulting from dividing the total net principal loss of the HDAS Investors by the total net principal loss of all investors in the Scheme;
- F. Several other Opt-Out Investors who had outstanding actions against the Society and other parties expressed concern that the release of their claims against the Society contemplated by the Notaries Settlement might impact their claims against the other parties to their actions;

NOW THEREFORE it is agreed that the terms of the Notaries Settlement shall be amended as follows:

1. Paragraph 6(b) is amended so that the amendment to the Class definition set out in that subparagraph now reads as follows:

“and who therefore are claimants in *The Matter of the Bankruptcy of Rashida Samji*, BCSC Vancouver Registry No. B-121430, including those claimants who opted-out of this Action on or before January 14, 2014 and who have not assigned their claim for compensation from the Society of Notaries Public of British Columbia for loss arising out of this investment, but excluding those claimants who have completed a separate settlement for their claims for compensation from the Society as of April 28, 2017” (the “Expanded Class”);


2. Paragraph 10 of the Notaries Settlement is amended so that the amount of the Settlement Fund to be paid by the Society is \$2,647,800.

3. Paragraph 33 of the Notaries Settlement is amended by adding the following passage to the end of that paragraph:

“, except those Expanded Class members who have an outstanding action against the Society and have agreed to discontinue that action and provide the Society with a covenant not to sue in a form acceptable to the Society”.

IN WITNESS WHEREOF the Parties have executed this Agreement as follows:

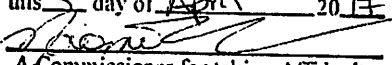
Date: April 4/2017

By:   
Paul Bennett as Class Counsel on behalf of the Plaintiffs and Class members

Date: April 4/2017

By:   
Brian Poston as Counsel for the Society



This is Exhibit "C" as referred to in the affidavit of Reidar Mogerman sworn before me at Vancouver, B.C. this 5 day of April 2017.  
  
 A Commissioner for taking Affidavits within British Columbia

**LIST OF DISBURSEMENTS**

**Paid by Bennett.Mounteer LLP:**

Dye and Durham Corporation – Court Fees	\$592.00
Dye and Durham Corporation – Filing Fees	\$47.60
PDX Courier Service	\$19.50
Postage – Notice Mail-Out	\$139.80
West Coast Title Search Ltd – Agent Fees	\$94.50
<b>TOTAL</b>	<b>\$893.40</b>

**Paid by Camp Fiorante Matthews Mogerman:**

B.C. Online – Court Registry Fees	\$114.00
DLF Communications	\$8,752.00
<b>TOTAL</b>	<b>\$8,866.00</b>

**TOTAL FEES: \$9,759.40**