



Civil Resolution Tribunal

Date Issued: September 27, 2019

File: SC-2019-004196

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sarah Leamon Law Corporation v. Wong*, 2019 BCCRT 1139

B E T W E E N :

SARAH LEAMON LAW CORPORATION

APPLICANT

A N D :

KA WAI PATRICK WONG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant Sarah Leamon Law Corporation says the respondent Ka Wai Patrick Wong retained it to provide legal assistance in connection with a *Motor Vehicle Act* allegation but did not pay for those services.

3. In his Dispute Response, the respondent says he does not know the applicant or what the dispute is about. In submissions, the respondent admits signing a retainer agreement with the respondent but says he did not understand the payment portion. He asks that the dispute be dismissed.
4. The applicant is represented by articled student Matthew Naylor. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;

- c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent must pay the \$1,680 owing for legal services.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I only refer to the evidence and submissions below as I find necessary to provide context for my decision.
11. On August 9, 2018, the respondent signed a retainer agreement to have Sarah Leamon of the applicant law firm act for him in a criminal law matter.
12. The retainer agreement specified a fee of \$2,500 plus tax and disbursements if the issue resolved prior to trial or \$3,500 plus \$1,000 per day for additional trial days if the matter proceeded to trial. The retainer agreement also reserved the applicant's right to charge more "...in appropriate cases, such as pressing circumstances, the requirement for work outside normal business hours, exceptionally successful or efficient representation, or special damages" or less if the matter resolved more easily.
13. The retainer agreement set out grounds for termination, at the client's option at any time, or by the lawyer for reasons including non-payment of legal fees, failure to maintain contact or instruct counsel.
14. The termination clause in the retainer agreement provided that if the respondent terminated the agreement, the respondent would have to pay the fees, disbursements, other charges and applicable taxes incurred up to the time the applicant stopped acting for him.

15. The respondent submitted that he was not aware that he had to pay the applicant at all if he ended the lawyer client relationship. I find that he was aware of the need to pay the charges incurred up to the termination, based on the language in the signed retainer agreement.
16. The respondent paid a \$500 retainer.
17. On January 22, 2019, Ms. Leamon wrote to the respondent to inform him that his trial had been scheduled for March 22, 2019. Ms. Leamon wrote that she would contact the respondent about 4 weeks before his trial date to prepare.
18. On March 13, 2019, the respondent emailed Ms. Leamon's assistant and said he would hire another lawyer to handle his case.
19. On March 15, 2019, Ms. Leamon responded, acknowledging the respondent's wish to retain new counsel. Ms. Leamon wrote that she would apply to remove herself as counsel of record in advance of the trial date.
20. On March 19, 2019, Ms. Leamon wrote to the respondent to say that her articled student had successfully applied to remove her as his counsel of record. Ms. Leamon noted the March 22, 2019 trial date and advised the respondent to attend unless it was adjourned. Ms. Leamon wrote that she would prepare an invoice for services rendered and deliver it to him.
21. On March 20, 2019, the applicant emailed an invoice to the respondent for \$2,240.00, broken down as \$2,000 in charges and \$240 in tax, for work including taking instructions, advising the respondent, appearing in court to adjourn his matter at the first appearance, obtaining and reviewing particulars, preparing and filing an arraignment report, scheduling a trial date, preparing for trial, correspondence to obtain instructions, making an application prior to the trial date, and removing Ms. Leamon as counsel of record.
22. The \$560 retainer balance in trust at the time was applied against the invoice, leaving the claimed amount of \$1,680 owing.

23. While the invoice is undated, it appears to say that the work was completed March 19, 2019. However, I find that the description encompasses the work Ms. Leamon completed on the file starting in August 2018 and ending in March 2019.
24. I find that the retainer agreement was mainly a contingency fee agreement where a certain fee would be paid based on the timing of obtaining a result. Here, the client withdrew from the agreement before the matter could be resolved.
25. Where a client terminates a contingency fee retainer agreement prior to the occurrence of the contingency, the solicitor is entitled to be paid according to the agreement's termination clause or, if no such clause exists, on a *quantum meruit* basis: *Maillot v. Murray Lott Law Corp.*, 2002 BCSC 343 at paragraph 83. *Quantum meruit* means a reasonable value for the services rendered.
26. The termination clause did not specify how the applicant would arrive at a reasonable charge for legal fees if the respondent ended the retainer.
27. Though not binding on me, I find the Vice Chair's analysis about assessing legal services accounts, in *Lorne N. MacLean Law Corporation v. Kapoor*, 2019 BCCRT 1063 at paragraph 25, helpful. While neither party provided me with the entire client file, bearing in mind that the tribunal's mandate includes proportionality, I find this was unnecessary in this case. I reviewed the scope of retainer and some communication between the respondent and Ms. Leamon. As well, there was a written retainer agreement and the invoice itemized tasks completed by Ms. Leamon.
28. Given this evidence, I find that I can assess the reasonableness of the \$2,000 invoice based on the surrounding circumstances. Since the respondent asked for a change of counsel within 10 days of the trial date, I find that Ms. Leamon had completed most trial preparation by that time. I also find that the respondent likely gained some benefit from the legal services rendered.

29. As a result, and because he signed the retainer agreement agreeing to pay the legal fees to the date of withdrawal in this circumstance, I find that the respondent must pay the applicant the claimed \$1,680.
30. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,680.00 from April 20, 2019, 30 days after the invoice was issued, to the date of this decision. This equals \$14.36.
31. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in paid tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,819.36, broken down as follows:
- a. \$1,680.00 in payment of the invoice,
 - b. \$14.36 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 tribunal fees.
33. The applicant is entitled to post-judgment interest, as applicable.
34. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
35. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only

be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member