



# Civil Resolution Tribunal

Date Issued: April 9, 2018

File: SC-2017-005223

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McLachlan et al v. Zhao*, 2018 BCCRT 119

**B E T W E E N :**

William A. McLachlan, Robert D.J. Brown, and David E. Anderson

**APPLICANTS**

**A N D :**

Yu Lin Zhao

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicants, who are lawyers, seek payment of \$1,579.60 for legal services they say they provided to the respondent. The respondent, Yu Lin Zhao, says she does not owe the applicants any money.
2. All parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). 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.
4. 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. Neither party requested an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. Is the respondent required to pay the applicants \$1,579.60 for legal services?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The parties agree that the respondent was referred to the respondents' law firm through the Canadian Bar Association's referral service. The respondent spoke to lawyer Mr. McLachlan on the telephone on September 16, 2016. She explained her legal problems, which were multiple and complex. Later that day, Mr. McLachlan emailed the respondent and set an appointment to meet.
10. The respondent met with Mr. McLachlan on Tuesday September 20, 2016. Mr. McLachlan took notes, and on September 21, 2016 he sent the respondent a 5-page letter summarizing the information the respondent provided at the meeting. The letter set out brief legal opinions on several issues that had been raised in the meeting, and included requests for further documents and information. Mr. McLachlan concluded the letter by providing legal recommendations on a court action previously filed by the respondent, and recommending that she file specific new court actions. Mr. McLachlan gave his opinion about the likely success of those court actions, and also made recommendations about a pending appointment with the police.
11. Mr. McLachlan concluded his letter by stating that their fees for acting on her behalf would be calculated at the attending lawyer's hourly rate, plus disbursement and taxes. He requested a \$3,500 retainer in order to initiate the new court claims.
12. The September 21, 2016 letter does not mention any fee for the September 20, 2016 meeting, or for the letter itself. Mr. McLachlan's notes and subsequent

correspondence indicate that after receiving his letter, the respondent said she wanted to wait before taking any further action.

13. On October 28, 2016, the applicants sent the respondent an invoice for \$1,579.60. This amount includes hourly fees for the September 20, 2016 meeting, the September 21, 2016 letter, and the respondent's follow-up telephone call, plus a \$50 file opening and closing fee, photocopying charges, and taxes.
14. The applicants attempted to collect the invoice amount, but the respondent did not respond. She now says that when she first spoke to Mr. McLachlan on the telephone, he confirmed that the first meeting would be free and she was never subsequently advised of any meeting fee. She says that if there had been an agreed fee for the first meeting, Mr. McLachlan would have asked for payment in his email setting up the appointment, given her a bill at the meeting, or let her sign something such as a client form. The respondent says she did not ask Mr. McLachlan to write down what she said in the September 21, 2016 letter.
15. The respondent says she told Mr. McLachlan in the first meeting that she was interviewing other lawyers and would decide who to retain. The applicants dispute this assertion.
16. The respondent provided a statement from her friend Mr. Wang. Mr. Wang says he attended the September 20, 2016 meeting and translated for the respondent. He says Mr. McLachlan said the first meeting would be free.
17. Mr. McLachlan says that during the September 16, 2016 telephone conversation with the respondent, he explained to the respondent that he always waived the \$25 lawyer referral fee as it was his practice to have an extended telephone discussion to identify the issues and make recommendations. He says he made it clear to the respondent that any follow-up meeting would be billed at his hourly billing rate.
18. Mr. McLachlan's written notes and correspondence prior to the September 21, 2016 letter do not say anything about fees or costs. They do not indicate what his

hourly rate is, or how it would be charged to the respondent. Moreover, the October 27, 2016 invoice does not set out Mr. McLachlan's hourly rate, nor does it specify how much time was spent on the meeting, the letter, or the other tasks noted on the invoice.

19. I accept that Mr. McLachlan told the respondent in their initial telephone call that he would charge her for the meeting. His notes and summary show that the meeting was lengthy. He would not likely have participated in it, or written the September 21, 2016 letter, without expectation of payment. However, he did not confirm any meeting charge in his email setting up the appointment, and did not confirm his hourly rate in writing before doing further work for the respondent.
20. Lawyers have a professional obligation to be fair and transparent in the fees they charge. Since Mr. McLachlan's correspondence and invoice never indicate his hourly rate or how much time he actually spent working on the respondent's file, I find that his bill in this case was not transparent. For that reason, there was no "meeting of the minds" between the parties about a fee for the meeting or the letter.
21. Because there was never an understanding between the parties that the respondent would have to pay for the meeting and the letter, the bill for the meeting and the letter is not recoverable, even on a quantum meruit basis.
22. There is also no evidence that the respondent was ever informed that she would have to pay a \$50 file opening and closing fee as a result of her meeting with Mr. McLachlan.
23. For these reasons, I find that the respondent is not required to pay the applicants for legal services. The applicants' claim is dismissed.
24. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful, so I dismiss their claim for reimbursement of tribunal fees. The respondent did not pay any fees and did not claim dispute-related expenses.

## **ORDERS**

25. I dismiss the applicants' dispute.

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Kate Campbell, Tribunal Member