



# Civil Resolution Tribunal

Date Issued: August 28, 2018

File: SC-2017-004965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Collins v. Canada Post Corporation*, 2018 BCCRT 479

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

Ullrich Collins

**APPLICANT**

**A N D :**

Canada Post Corporation

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about cannabis that the applicant, Ullrich Collins, and his spouse attempted to mail in 3 packages in around September 2017, which he says was medically prescribed and necessary for an overseas trip. The applicant claims \$1,200 for the respondent Canada Post Corporation's seizure of his and his

spouse's 3 packages containing the cannabis. The applicant also claims \$1,800 for trip cancellation and inconvenience, "compensation for hardships", loss of medication and pain and suffering. The applicant says the respondent, Canada Post Corporation, had no right to open his packages and no right to seize them.

2. The respondent says it did not permit the cannabis packages to be mailed and seized them, because cannabis was not legally "mailable", as discussed further below. The applicant is self-represented and the respondent is represented by Rhonda Bender, an employee.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (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 I can fairly resolve the dispute based on the documentary evidence and submissions before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.
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.
7. I note that this dispute comes before me for decision on its merits after the respondent successfully applied to cancel an earlier default decision, on the basis that it never received proper notice of the applicant's dispute. I note the packages' cannabis contents, and the related illegality of mailing that content, was not known to the tribunal at the time the default decision was issued. Ultimately, I have reviewed the evidence and submissions before me anew for the purposes of this decision.

## **ISSUES**

8. The issues in this dispute are a) whether the respondent improperly opened and seized the applicant's mail packages containing cannabis, and b) if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. The applicant says its 3 packages contained vacuum-sealed cannabis, which he says was "legal medicine" for his and his spouse's planned trip. The applicant appears to suggest that Health Canada indicated mailing the cannabis was permissible, although the applicant has provided no evidence to support this contention. The applicant's only substantive evidence are receipts from the respondent for attempting to mail the cannabis-containing packages, and so I do not have any evidence before me to confirm the cannabis had been legally prescribed at the time. For the reasons that follow, I accept the respondent's argument about its legal basis for opening and seizing the cannabis packages.

11. The essence of the applicant's argument is that in around September 2017 the respondent's worker named Y opened and viewed one of his cannabis-containing parcels, in front of him and his spouse, while they were at the respondent's mail depot. The applicant says Y had no basis to do so, and that had Y not done so, the applicant's packages would have reached their intended destination, the applicant's vacation location. The applicant says "all they had to do is deny the acceptance of the packages initially and or return the said items". The applicant does not specifically address the respondent's legal arguments, which are discussed below.
12. I pause to note that the respondent has provided a significant amount of evidence and submissions that the applicant knew mailing the cannabis was illegal and actively tried to hide what was being mailed, and also actively tried to conceal their knowledge of the illegality of mailing cannabis. The applicant submits that he and his spouse mailed the packages because they could not carry them aboard Canadian flights without great delays, and "thus we chose this method". While I agree that there is some evidence before me to support the respondent's contention, I find I do not need to resolve whether the applicant knew it was illegal to mail cannabis or made any concealment efforts. I say this because I find the respondent's legal arguments are sufficient to dispose of the applicant's claims, as set out below.
13. The respondent says mailing cannabis was illegal as it was not a "mailable matter", as defined in the *Canada Post Corporation Act (CPCA)*. As such, the respondent was entitled to inspect packages and was required by law to stop the cannabis from being sent through the mail. The respondent says it was also authorized by law to seize the packages' contents. I agree with the respondent, as detailed below.
14. Section 41(1)(c) of the CPCA states that the respondent may open any mail other than a letter to determine in any particular case whether the mail is non-mailable matter. Non-mailable matter is defined through a combined reading of certain

sections of the *Non-mailable Matter Regulations*, a related Schedule, and the *Controlled Drugs and Substances Act* of Canada (CDSA). The material point is that at the time this dispute arose, cannabis was a controlled substance as set out in the CDSA.

15. The respondent's evidence is that its staff suspected the packages contained non-mailable matter because they had the odour of cannabis, and thus the respondent was entitled to inspect the contents. The fact that the applicant vacuum sealed the cannabis is not determinative. The applicant may have handled the packages after handling the cannabis, and the applicant has provided no explanation of how they handled the packages (other than to say the cannabis was vacuum sealed). On balance, I accept the respondent's agents smelled cannabis on the packages and on that basis reasonably opened them for inspection. I find this is a complete defence to the applicant's argument that Y improperly opened his packages.
16. The respondent then sent the applicant's and his spouse's 3 cannabis-containing packages to its "Undeliverable Mail Office" (UMO). Once it was confirmed the packages contained cannabis, the respondent's usual practice would be to turn the packages over to the RCMP for their investigation and disposal, as set out in section 4 of the *Non-mailable Matter Regulations*. However, as the applicant's spouse filed a complaint about the packages not being delivered (which she first described as a gift for relatives and then later described the cannabis as being necessary because she was going on a trip), the respondent held the packages "awaiting final disposition". I am not aware of the present location or status of the packages. For clarity, nothing in this decision stops the respondent from disposing of the packages as per the applicable legislation.
17. In short, a drug like cannabis was non-mailable matter, unless mailing it is permitted by the regulations. There is no evidence before me that the applicant or his spouse is a "designated person" under the *Access to Cannabis for Medical Purposes Regulations* (ACMPR), and even if the applicant was such a person, which he has not alleged let alone proved, the regulations would not permit mailing

the 3 packages to the identified recipients. Further, I find the respondent properly seized the packages because the senders (the applicant and his spouse) failed to comply with the ACMPR in terms of packaging requirements.

18. As I have found the respondent did not act improperly in opening and seizing the packages, I do not need to address the applicant's requested remedies.
19. Given my conclusions above, I dismiss the applicant's claims. As the applicant was unsuccessful in this dispute, in accordance with the Act and the tribunal's rules I find he is therefore not entitled to reimbursement of tribunal fees.
20. The respondent requests reimbursement of a \$50 dispute-related expense, which it paid to request the cancellation of the default judgment the applicant obtained. I find this request is reasonable, because the applicant has provided no explanation as to why he sent the respondent a handwritten "Notice of Claim" form out of the Provincial Court, rather than the tribunal's Dispute Notice as required. As I set out in my earlier decision granting the respondent's request to cancel the default judgment, the respondent reasonably had no idea there was a tribunal dispute to which it had to respond. In other words, I find the applicant is responsible for the default judgment being issued and for the respondent having to apply for its cancellation.

## **ORDERS**

21. I order that the applicant's claims, and therefore this dispute, are dismissed. I also order the applicant to immediately reimburse the respondent \$50, which was a dispute-related expense the respondent paid to ask for cancellation of the tribunal's earlier default judgment. The respondent is entitled to post-judgment interest on the \$50.
22. Under section 48 of the Act, 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.

23. Under section 58.1 of the Act, 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 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.

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Shelley Lopez, Vice Chair