



# Civil Resolution Tribunal

Date Issued: September 20, 2018

File: SC-2017-006174

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Giddings MacEachern Law v. Mager*, 2018 BCCRT 540

B E T W E E N :

Giddings MacEachern Law

**APPLICANT**

A N D :

John Mager

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant law firm, Giddings MacEachern Law, claims the respondent, John Mager, owes outstanding legal fees of \$2,347.56, plus contractual interest. The respondent refuses to pay, on the basis that he was allegedly overcharged and the

assigned lawyer was incompetent. The applicant is represented by Nicole Sutherland, an employee. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
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 it based on the documentary evidence and submissions before me.
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.

## **ISSUE**

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant for outstanding invoices for legal fees and disbursements.

## EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons.
9. It is undisputed that the applicant law firm acted as counsel in a family law matter for the respondent between June 13 and August 16, 2016. The agreed-upon rate was \$300 per hour.
10. Under the parties' retainer agreement, on June 14, 2016 the respondent provided a \$5,000 retainer, which was held in trust and used on July 8, 2016 to partially pay the applicant's invoice #25500 that totalled \$6,818.56. The parties agreed that the respondent would replenish the retainer from time to time as needed.
11. The applicant closed the respondent's file on August 16, 2016, because the respondent wished to represent himself from that point forward. At that point, the applicant had billed a total of \$7,347.56. After applying the \$5,000 retainer, this left \$2,347.56, the amount claimed in this dispute. In addition, under the retainer's terms, the respondent incurred \$787.05 in contractual interest (26.82% per year) up until October 27, 2017 when the Dispute Notice was issued.
12. In his Dispute Response, the respondent said in addition to the \$5,000 retainer, he paid \$4,452.02 on September 9, 2016. He said he was told he was paid in full at that time, and that he had the receipt to prove it. However, the respondent never provided that receipt and instead only provided a copy of the applicant's invoices and a trust statement that showed a zero "trust balance" in mid-July. That zero balance simply meant the respondent no longer had funds in trust as his \$5,000 had been completely used to pay for services rendered. I do not accept that the respondent has paid anything more than the \$5,000, based on the evidence and submissions before me.
13. The respondent did not challenge the quality of the applicant's work in his Dispute Response, other than to say he was "overcharged". Further, while the respondent

now also submits that the applicant's legal services were incompetent, he did not challenge any of the work detailed on the invoices.

14. The applicant's invoices deal with review of documents, telephone discussions and email exchanges with the respondent and with opposing counsel. They also address witness interviews, drafting affidavits, pleadings, and other preparation for a June 2016 application. The invoices provide a line item breakdown of the date and time spent on each activity.
15. On balance, I find the applicant's time was reasonably spent and authorized for the types of activities described. This is similar to the approach used by the BC Supreme Court Registrar, as set out in section 71(2) and (4) of the *Legal Profession Act*, although I acknowledge such a review now appears to be out of time.
16. In summary, I find the applicant is entitled to payment of the outstanding \$2,347.56, plus \$1,351.12 (\$787.05 + \$564.07) in 26.82% contractual interest to the date of this decision. In accordance with the Act and the tribunal's rules, as the applicant was successful I find it is also entitled to reimbursement of \$175 in tribunal fees.

## **ORDERS**

17. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,873.68, comprised of:
  - a. \$2,347.56 as payment of the applicant's outstanding invoices for legal services,
  - b. \$1,351.12 in pre-judgment interest, at a 26.82% contractual rate, and
  - c. \$175 in tribunal fees.

18. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.
19. 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.
20. 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 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.

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Shelley Lopez, Vice Chair