



# Civil Resolution Tribunal

Date Issued: August 23, 2019

File: SC-2019-002009

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Akhtar v. Routtenberg et al*, 2019 BCCRT 1003

BETWEEN:

SAEED AKHTAR

**APPLICANT**

AND:

LARRY ROUTTENBERG, FERHAD SEAN AMIRI, and METRO LAW  
OFFICE LLP

**RESPONDENTS**

AND:

SAEED AKHTAR

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is a wrongful dismissal claim and a counterclaim for damages, between a lawyer and his former law firm. The applicant Saeed Akhtar is a lawyer who worked for the respondents Larry Routtenberg, Ferhad Amiri, and their law firm, Metro Law Office LLP (collectively, MLO). Mr. Akhtar says that MLO fired him without giving adequate notice and did not pay him for the work he did. He says that he is owed \$8,806.00, which includes the cost of \$3,191.00 in Law Society fees and insurance. He also says he is entitled to compensation for two weeks' notice, but he has abandoned his claim for any compensation above \$5,000.00. Mr. Akhtar represents himself.
2. MLO says it did not have an enforceable contract with Mr. Akhtar, because they say he was only hired as an associate to work on a percentage basis. MLO says that Mr. Akhtar's work was unsatisfactory, and it denies it owes him any money. Mr. Routtenberg and Mr. Amiri represent MLO and themselves.
3. In the counterclaim, MLO seeks a total of \$5,000 in damages. It argues that other employees had to spend time fixing Mr. Akhtar's errors, which cost MLO \$3,000.00. It also asks for \$1,000.00 in compensation for the time spent reviewing and responding to claims Mr. Akhtar made to the Law Society of British Columbia and the Employments Standards Board of British Columbia. It further requests \$1,000.00 for the loss of business caused by Mr. Akhtar's alleged incompetence and negligence.
4. In response to the counterclaim, Mr. Akhtar says that he completed all his assigned work except for the files that MLO said in April 2018 that he could not work on any further. He argues that, if there were any errors in his work, he was available to fix them but MLO did not let him.

## 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. In some respects, this dispute amounts to a "he said, they said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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.
9. Under section 31(c) of the *Employment Standards Act* (ESA) Regulation, the ESA does not apply to Mr. Akhtar because he is a member of the Law Society of BC.

This dispute is within the tribunal's small claims jurisdiction, as set out in section 118 of the CRTA.

## **ISSUES**

10. Does MLO owe Mr. Akhtar money for the legal work he did, Law Society fees, and for pay in lieu of two weeks' notice?
11. Does Mr. Akhtar owe MLO \$5,000.00 in compensation for the time it took to fix Mr. Akhtar's errors, the time spent reviewing and responding to Mr. Akhtar's claims, and for the loss of business MLO says it suffered due to Mr. Akhtar's alleged negligence and incompetence.

## **EVIDENCE AND ANALYSIS**

12. In a civil dispute such as this, the applicant must prove their claim. They bear the burden of proof on a balance of probabilities. Therefore, Mr. Akhtar needs to prove his claim against MLO, just as MLO needs to prove its counterclaim against Mr. Akhtar.
13. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
14. MLO argues that Mr. Akhtar is saying false things about them to support his case. I find that the circumstances surrounding how a file was handled and a relationship with one of MLO's client is not relevant to my determinations about the issues raised by the parties. Therefore, I have not considered it.

***Between November 17, 2017 and December 31, 2017***

15. The applicant says he worked as a part-time associate with MLO from November 17, 2017 to December 31, 2017, and then as a full-time associate from January 1, 2018 to April 7, 2018. It is undisputed that there was no written agreement between the parties during the 2017 time-period. While enforceable, verbal agreements are harder to prove than written ones. There is an email where Mr. Akhtar proposes getting paid 50% of legal fees or \$3,000.00 per month. Mr. Akhtar says that he began working as a part-time associate and that MLO agreed to pay him \$3,000.00 a month but they only paid him \$2,000.00. He is claiming \$1,000.00 for this time-period.
16. MLO says that the verbal agreement during this time frame was that Mr. Akhtar would work for a percentage of fees collected and this amount would be finalized with one of MLO's partners on a monthly basis. MLO says the maximum Mr. Akhtar was allowed to earn was \$3,000.00 a month. MLO says that there were 3 cheques issued to Mr. Akhtar on December 19, 2017, March 2, 2018, and March 12, 2018 totaling \$3,250 and that these cheques clearly indicate on the description line that they were payment for work completed in the year 2017.
17. Mr. Akhtar provided a document which says that he worked 13 days and was supposed to get paid \$3,000.00 a month. The document says that \$1,000.00 was paid and there is a balance owing of \$2,000.00. This evidence is not consistent with Mr. Akhtar's argument that \$1,000.00 was owing. There is no other evidence about what work was done or any confirmation that MLO did not properly pay Mr. Akhtar for this time-period.
18. Both parties refer to the fact that Mr. Akhtar was to receive \$3,000.00 and MLO says they paid more than this, I find that the term of the agreement was that Mr. Akhtar would receive a maximum of \$3,000.00 a month for this time-period.
19. Therefore, although there was an agreement that Mr. Akhtar would provide legal services, Mr. Akhtar has not proved that MLO owes him \$1,000.00 for the work done between November and December 2017. Accordingly, I dismiss Mr. Akhtar's claim for \$1,000.00 for work completed between November and December 2017.

## ***The 2018 Agreement***

20. Mr. Akhtar sent an email to MLO on January 3, 2018 thanking it for offering him a 4-5 day a week position and attached a written agreement setting out the terms. The agreement said that Mr. Akhtar would receive 50% of his billings and that MLO would pay Mr. Akhtar's Law Society and insurance fees. It also said that the agreement could be terminated with a month's notice.
21. Mr. Routtenberg added handwritten notes changing the agreement to say that the Law Society fees would be paid on a 1/12 basis, which I infer is a monthly basis, and the notice period was reduced to two weeks. Mr. Akhtar says that Mr. Routtenberg told him to take the agreement to Mr. Amiri, who then told Mr. Akhtar that he would sign it. The agreement in evidence is not signed. However, Mr. Akhtar began to work for MLO for at least the 4 days set out in the agreement. Also, MLO did begin to pay Mr. Akhtar his legal fees on a percentage basis.
22. MLO argues that the agreement was only a document used during the negotiation phase by all parties in order to set terms of a future agreement and that a final agreement was never drafted, agreed on, or signed by any of the parties. They say there is no enforceable contract or agreement of any sort and therefore it should not have to pay Mr. Akhtar any more money
23. Mr. Akhtar says that Mr. Routtenberg indicated his intention to enter the agreement when he added handwritten notes to finalize the terms of the agreement. Mr. Akhtar states that Mr. Amiri led him to believe he would sign. Mr. Akhtar says he thought that the contract had been agreed to and signed. Further, Mr. Akhtar then continued to go to the office on more days than he previously did and MLO paid him more than \$15,000.
24. I find that the combination of the written agreement updated by MLO, and the fact that Mr. Akhtar began to work essentially full-time with MLO and was paid by MLO, meant that there was a binding agreement between the parties that Mr. Akhtar

would work for MLO receiving 50% of his billable fees, his Law Society fees would be paid on a monthly basis, and he was entitled to two weeks' notice

25. MLO also argues that the agreement never specifically said that it promised to pay Mr. Akhtar notary fees. Mr. Akhtar says that notary fees are included in fees for legal services, which were set out in the agreement, and therefore he is entitled to be paid for these services. I accept Mr. Akhtar's point on this. It makes no sense that Mr. Akhtar should be expected to, or that he would agree to, provide notary services for free. Notary services are services provided by lawyers in British Columbia. I find that they fall under the general term legal services.
26. As discussed below, the parties' relationship deteriorated and MLO sought an amendment to the arrangement. MLO began to reduce Mr. Akhtar's fees, stopped paying his Law Society fees, and then ended the agreement without giving him two weeks' notice.

### ***Dismissal Without Notice***

27. The relationship broke down between the parties in early April 2018 with MLO claiming that Mr. Akhtar was not performing his work satisfactorily. MLO says that Mr. Akhtar was not in the office when he was supposed to be. It says he refused to take calls and that he used MLO's office to perform work for another law firm. MLO also says that Mr. Akhtar claimed payment for files where other staff did the majority of the work.
28. Mr. Akhtar denies this and says he stopped working for the other law firm once he began working full-time for MLO in January 2018. On the evidence, it is unclear whether Mr. Akhtar continued to work with another firm. However, MLO did not provide evidence that Mr. Akhtar used MLO's office and resources to work for another law firm. I find that there is insufficient evidence to make this finding.

29. Therefore, I need only decide whether MLO had justification for ending the agreement with Mr. Akhtar on other grounds without providing notice, and how much the legal services provided by Mr. Akhtar were worth.
30. In *Acumen Law Corporation v. Ojanen*, 2019 BCSC 1352, the British Columbia Supreme Court looked at the law surrounding “just cause” for ending an employment agreement and said that it requires a finding that the worker was guilty of misconduct which made it so the employment relationship could no longer continue. The Court said that there must be proof of misconduct that amounts to a fundamental breach of the contract and that it is up to the employer to prove this. The Court indicated that one needs to consider how minor or serious the misconduct was when deciding whether the firing was justified.
31. Based on the evidence before me, I find MLO did not prove that Mr. Akhtar came in late or left early or that he performed work for another law firm while he was there. MLO also did not provide persuasive evidence that Mr. Akhtar claimed he did work that was actually done by other staff members. There are no witness statements from the other staff members saying that they did the majority of work and that Mr. Akhtar billed for it. There are also no emails or letters of warning to Mr. Akhtar about his unsatisfactory conduct. If Mr. Akhtar’s conduct was as poor as alleged by MLO, I would expect some contemporaneous documentation of it, including written warnings. Yet, there is none. I find that the evidence does not show that MLO was justified in ending the employment agreement without notice.
32. In deciding how Mr. Akhtar should be compensated, I note Mr. Routtenberg drafted the 2 weeks’ notice term in the unsigned agreement, which I find is reasonable notice. This is the amount of notice sought by Mr. Akhtar. I will calculate the amount of the 2 weeks’ notice below, after I determine the value of the legal services provided by Mr. Akhtar.

### ***Law Society Fees***



33. Mr. Akhtar says that his Law Society and insurance fees are \$3,191.00, or approximately \$265.83 per month, and that MLO only paid him a total of \$500.00. He says that it agreed to pay the entirety of his fees but wanted to break them down in monthly installments. MLO says it paid a portion of Mr. Akhtar's Law Society fees and insurance to be accommodating and not because it was bound by the agreement. Given that MLO only started to pay the Law Society fees after the January 2018 agreement was made, I find it more likely that MLO did so because it agreed to it and not just to be accommodating.
34. I find MLO was required to pay Mr. Akhtar's Law Society fees for the 4 months he worked for them between January and April 2018, and not more. These fees total \$1,063.00. MLO paid \$500.00, so MLO owes \$563.00 to Mr. Akhtar.

#### ***Value of Legal Services Provided by Mr. Akhtar***

35. MLO says that it is not obligated to pay Mr. Akhtar the claimed amount because he did not bring the files into the office and he had other members of the staff assist him with drafting documents and signing them. It says that although this was not stated explicitly in the agreement, the parties' understanding was that Mr. Akhtar was to complete all work on his own. MLO has provided documents where it has circled the assistants' names or documents which were signed by another member of the firm to prove that somebody else did the majority of the work.
36. Mr. Akhtar says it was never part of the agreement that he could not get assistance from other staff members and that the general functioning of a law practice allows other members to assist in file completion, including assistants who put their initials on outgoing documents. He also points out that when any significant work was done by other members of the firm that his fees were reduced.
37. Mr. Akhtar provided a fees adjustment sheet where Mr. Routtenberg has added handwritten notes adjusting Mr. Akhtar's percentage of the fees to less than the 50% stated in the agreement. Mr. Akhtar argues that MLO has already taken this

amount off the top and that he is not claiming for it, only the amounts he was promised.

38. MLO admits that Mr. Routtenberg made the notes on the fee sheet reducing the fees they said they would pay Mr. Akhtar for ongoing files. However, they say that Mr. Routtenberg made the notes on the fee sheet with the understanding that Mr. Akhtar would prepare the majority of documents for those files going forward. They argue that after reviewing the files and seeing the quality and amount of the work completed by Mr. Akhtar, even the fees reduced to less than 50% needed to be reduced further.
39. It is undisputed that Mr. Akhtar did not have access to his password to electronically file documents with the Land Title Office and so another lawyer in the firm would use their signature. I do not find that this proves that Mr. Akhtar did not do the work. I also find that an assistants' initials on letters and documents sent by Mr. Akhtar does not mean Mr. Akhtar did not do the work. This is a common practice in law firms and a way to identify who assisted with the final draft of a document.
40. I also find that even though certain errors were made in documents drafted by Mr. Akhtar this does not mean that he was not entitled to be reimbursed for the legal services he provided. The documents in evidence show that MLO made similar errors and that Mr. Akhtar assisted MLO in correcting them.
41. I agree that the fee statement provided by Mr. Akhtar shows MLO reduced Mr. Akhtar's fees to below the 50% stated in the agreement. Therefore, a reduction of fees was already calculated when other members of the firm contributed to the handling of the file. For the reasons above, I do not accept MLO's position that they had reason to adjust Mr. Akhtar's fees even further. Accordingly, where there is a dispute as to whose evidence to accept about fees owed for legal services provided, I accept the evidence of Mr. Akhtar.
42. Mr. Akhtar has provided a final accounting showing his legal services resulted in fees totaling \$18,865, not including the \$3,191 Law Society fees and insurance, or

the \$3,000 claimed for the 2017 period. Mr. Akhtar worked for 14 weeks, after the January 2018 agreement, dividing the \$18,865.00 by 14 equals \$1,347.50 per week. So, 2 weeks' notice equals \$2,695.00.

43. Mr. Akhtar says that MLO paid him some of the fees for the legal services but that \$8,806.00 is still owed. Again, this calculation includes law society fees, insurance and amounts for November to December 2017, which I have deducted. Based on my calculations, after deducting the Law Society fees and the 2017 period that I addressed separately, I find that Mr. Akhtar is entitled to \$4,615.00 outstanding for legal services provided from January 1, 2018 to April 7, 2018.
44. Adding together the \$563.00 for Law Society fees and insurance, \$2,695.00 as compensation for 2 weeks' notice, and \$4,615.00 in outstanding fees for legal services, the total is \$7,873.00. Therefore, I find Mr. Akhtar is entitled to the \$5,000.00 claimed.
45. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgement interest on the amount owing from his last day of employment on April 7, 2018 to the date of this decision. This equals \$113.29.
46. 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. Because I find Mr. Akhtar was successful in his claim, I find that he is entitled to have his \$175.00 tribunal fees reimbursed.

### ***Counterclaim***

47. Given my conclusions above, I find that MLO has not proved that it is entitled to \$3,000 for time spent by other employees fixing Mr. Akhtar's errors.
48. MLO also requests reimbursement of time spent dealing with Mr. Akhtar's complaint to the Law Society of British Columbia. MLO has not provided any evidence regarding the complaint or the outcome or how the Law Society of British Columbia

rules have any application to this dispute. Also, the tribunal does not generally allow for reimbursement of time spent on the dispute. Therefore, I dismiss this claim.

49. Similarly, MLO asks for reimbursement of time spent on the Employment Standards Board of British Columbia process. I have no jurisdiction to decide this issue. The Employment Standards Board controls its own process and can award any expenses available in that process. Further, MLO is not entitled to compensation from this tribunal for time spent responding to these issues.

50. I also find that MLO has not proved that Mr. Akhtar was incompetent or negligent or that they lost business because of him. Therefore, I dismiss MLO's counterclaim.

51. Because MLO was unsuccessful in its counterclaim, I find it is not entitled to reimbursement of tribunal fees.

## **ORDERS**

52. Within 30 days of this decision, I order MLO to pay Mr. Akhtar a total of \$5,288.29, broken down as follows:

- a. \$5,000.00 for legal services, Law Society fees, and compensation in lieu of notice,
- b. \$113.29 in pre-judgement interest under the *Court Order Interest Act* (COIA), and
- c. \$175.00 in tribunal fees.

53. Mr. Akhtar is also entitled to post-judgement interest under the COIA, as applicable.

54. 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.



55. 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.

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Kathleen Mell, Tribunal Member