



# Civil Resolution Tribunal

Date Issued: September 25, 2019

File: SC-2019-003320

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *North Shore Law LLP v. Nip*, 2019 BCCRT 1131

B E T W E E N :

NORTH SHORE LAW LLP

**APPLICANT**

A N D :

LESLIE NIP

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

### INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant North Shore Law LLP says it provided legal services to the respondent Leslie Nip, but that he failed to pay. The applicant claims \$2,797.67 for the unpaid services.

3. The respondent says he does not owe the applicant anything, because the legal services were not provided. He asks that the dispute be dismissed.
4. The applicant is represented by the lawyer who provided the legal services, Janneke Lewis. 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 applicant \$2,797.67 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 March 19, 2018, the respondent retained the applicant to provide legal services in a family law matter. Ms. Lewis also provided advice to the respondent on how to address a contempt order issued against him prior to the applicant's involvement.
12. The respondent signed an Agreement for Legal Service (retainer agreement) and paid a \$3,000 retainer.
13. The retainer agreement said that Ms. Lewis' time would be billed at \$425 per hour, plus disbursements.
14. The retainer agreement also provided for 18% annual interest on overdue accounts.
15. On April 6, 2018, Ms. Lewis wrote a detailed 5-page letter to the respondent outlining the issues in the family law dispute, and her advice on how to proceed. The letter concluded by noting that the respondent had offered his opinion that she might not be able to effectively defend him in the litigation. Ms. Lewis indicated that, if he did not have confidence in her ability to act for him, then the necessary trust between solicitor and client had been diminished and she could no longer act for him. The letter asked the respondent to reply to let her know whether or not this was the case. Ms. Lewis offered to provide names of senior counsel, if he opted to retain someone else.
16. There was some communication between the respondent and Ms. Lewis which resulted in her continuing to act for him until April 17, 2018.

17. On April 16, 2018, Ms. Lewis again wrote to the respondent to report on her review of all affidavits, financial statements and court orders in the family law proceeding. Ms. Lewis provided her opinion on the issues and summarized her understanding of the respondent's instructions.
18. On April 17, 2018, Ms. Lewis wrote to the respondent to say that she could no longer act for him. Ms. Lewis filed a Notice of Withdrawal and explained that the respondent had 7 days to object to her withdrawing. Ms. Lewis advised the respondent to seek new counsel as soon as possible to postpone the May 11, 2018 hearing date.
19. On April 18, 2018, Ms. Lewis emailed the respondent to say that he was not following her advice. I assume this email was in response to an inquiry from the respondent, though that was not clear on the materials before me. In her email, Ms. Lewis explained that she was withdrawing as his counsel, in part because they disagreed about how to address the contempt issue.
20. On April 30, 2018, the applicant sent the respondent a \$5,979.67 account for legal services rendered. Retainer funds of \$3,000 were applied against it, leaving a balance owing of \$2,797.61, the amount claimed in this dispute.
21. It is undisputed, and I find, that the respondent has not paid the \$2,797.61.
22. The respondent says the applicant failed to represent him in a May 11, 2018 hearing, did not learn the facts of his case and was "deceived" by the opposing party.
23. The Law Society of British Columbia's Code of Professional Conduct for British Columbia (Code) governs the professional responsibilities of lawyers. At section 3.7(2), the Code says that a lawyer may withdraw if there has been a serious loss of confidence between the lawyer and the client. A client refusing to accept and act upon advice on a significant point is considered just cause for withdrawal.

24. I have considered whether the respondent had sufficient time to find new counsel. There were 23 days between the April 17, 2018 letter and the May 11, 2018 application date. I find that this was enough time for the respondent to retain new counsel. The reasons for judgement filed in evidence show that the respondent was represented by counsel at the May 11, 2018 hearing.
25. While I understand that the respondent may be upset that Ms. Lewis did not represent him at a May 11, 2018 hearing, I find that she was entitled to withdraw, based on the loss of confidence between lawyer and client, as documented in her letters to the respondent at the time.
26. I find that there is no evidence that Ms. Lewis failed to learn the facts of the case, as the respondent contends.
27. As well, I find that the evidence did not show that Ms. Lewis allowed herself to be deceived by opposing counsel. To be more specific, the respondent submits that Ms. Lewis was “deceived by the contempt application filed April 13, 2018.” In her April 6, 2018 letter, Ms. Lewis urged the respondent to comply with a March 5, 2018 court order or risk being found in further contempt. She wrote “I anticipate that Penny Paul will be bringing a further application to find you in contempt...” I cannot agree that Ms. Lewis was “deceived” by an April 13, 2018 application seeking to find the respondent in further contempt, when she warned him of that very possibility.
28. I have reviewed the applicant’s April 30, 2018 invoice and the April 2018 letters to the respondent. The invoice provides a detailed breakdown of her legal work, explaining the amount of time spent on each specific task for things such as reviewing the file, orders and pleading, drafting letters to the respondent, a letter to opposing counsel, and considering appeal options. I find that the 11.70 hours spent on these tasks is reasonable, based on the materials filed in evidence.
29. As well, the retainer agreement was in writing and contained clear agreement to the hourly rate. Based on her affidavit evidence, I find that Ms. Lewis’ hourly rate was reasonable, given her experience in the family law area.

30. 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. In making my decision, I reviewed Ms. Lewis' opinion and advice letters to the respondent, and 354 pages of materials filed by the respondent, including Orders, emails, affidavits and relevant reasons for judgement. Based on these materials, I find that the respondent's family law matter warranted the time the applicant spent on it.
31. Given the agreement that 18% annual interest would apply to overdue accounts, I find that the applicant is entitled to pre-judgement interest on the \$2,797.67 from May 30, 2018, 30 days after the invoice was issued, to the date of this decision. This equals \$666.38.
32. 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 tribunal fees. The applicant did not claim dispute-related expenses.

## **ORDERS**

33. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,589.05, broken down as follows:
  - a. \$2,797.67 in payment of the balance owing on the April 30, 2019 invoice,
  - b. \$666.38 in pre-judgment interest at the agreed 18% annual contractual rate,  
and
  - c. \$125 tribunal fees.
34. The applicant is entitled to post-judgment interest, as applicable.

35. 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.
36. 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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Julie K. Gibson, Tribunal Member