



# Civil Resolution Tribunal

Date Issued: February 3, 2020

File: SC-2019-008035

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cote & Evans Trial Lawyers v. Ongwech*, 2020 BCCRT 132

B E T W E E N :

COTE & EVANS TRIAL LAWYERS

**APPLICANT**

A N D :

AKOL TONG ONGWECH

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Chad McCarthy

### INTRODUCTION

1. This is a dispute over unpaid legal fees and expenses. In 2014 the respondent, Akol Tong Ongwech, retained a lawyer from the applicant law firm, Cote & Evans Trial Lawyers, for a family law dispute. The respondent failed to pay the applicant's September 30, 2017 invoice, which was due October 30, 2017, as well as its later

invoices. The applicant law firm continued to work on the respondent's case until June 2018, when the respondent ceased its relationship with the applicant.

2. The applicant claims \$3,945.54 in unpaid legal fees and expenses. The respondent does not argue that any of the specific services and expenses recorded in the applicant's invoices were not provided. However, the respondent says he received poor service from the law firm, resulting in delays and an unfavourable outcome. The respondent argues the amounts he previously paid the applicant adequately compensate it for the services provided.
3. The applicant is represented by a non-lawyer employee. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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 only, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent owes the applicant \$3,945.54 for legal services and related expenses, or does not have to pay due to poor service.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proving its claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. This is a debt claim. The parties agree the applicant law firm provided legal services to the respondent under a retainer agreement, although neither party submitted a copy of the agreement as evidence in this dispute. In any event, the respondent does not claim that the hourly rates or expenses charged by the applicant were incorrect. As noted above, the respondent says the applicant provided poor service and for that reason is not entitled to payment.
11. I have reviewed the invoices and statements of account submitted by the applicant. The applicant last made a payment on July 31, 2017. At issue in this dispute is the outstanding balance owing on a September 30, 2017 invoice, and payment for work done from that invoice until a final June 7, 2018 invoice. The June 7, 2018 invoice shows an outstanding balance of \$3,945.56. For reasons unknown to me, the applicant reduced its claim to \$3,945.54.
12. I find that the applicant provided legal services and expenses totalling \$3,945.54, which covers the period from September 2017 until June 2018, when the

respondent ended their relationship. The respondent disagrees that he owes anything for these services, because they were allegedly deficient.

13. Where deficient work is alleged, the burden of proof is on the party asserting the defects. So, the respondent must prove on a balance of probabilities that the applicant breached their agreement by failing to provide legal services that were of reasonable quality, as stated in *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
14. The respondent says the applicant's lawyer agreed to help him get a divorce, including a division of family property. The respondent says the applicant's lawyer assured him of a specific result, which he did not get. The respondent did not explain what this promised result was, but I infer it was a final divorce and division of property.
15. Other than the respondent's own submissions, there is no evidence that the applicant's lawyer promised a specific outcome. Moreover, the evidence supports a finding that the respondent ended his relationship with the applicant before an agreement on property division was reached and divorce proceedings were concluded. As the applicant no longer represented the respondent, it could not have achieved the allegedly promised result. Given the above, I place little weight on this argument.
16. The respondent also says the applicant failed to properly pursue his case in court. Specifically, the respondent says his lawyer failed to expedite the proceedings despite the respondent's repeated requests. The respondent argues that the applicant took too long to finalize his divorce and settlement, and that he was prejudiced by the applicant's lack of action and delays. The respondent indicates these alleged delays led to him ending his relationship with the applicant.
17. Specifically, the respondent says the applicant did not set a trial date when requested because his (now former) wife did not have a lawyer at the time. However, the respondent says he paid all the applicant's invoices until August 2017,

and there is no evidence he requested a discount for poor service or delay up to that point. The applicant's unpaid invoices in late 2017 and 2018 record many activities related to scheduling examinations for discovery, negotiating a settlement, and setting trial dates. I find this evidence does not show a significant lack of action or diligence in pursuing the respondent's case. Further, the evidence does not demonstrate that the delays complained of by the respondent were entirely within the applicant's control. On the evidence before me, I find the respondent has failed to prove there were any significant delays in the respondent's case, or that the applicant was responsible for such delays.

18. Given my conclusions above, I find the respondent has not met the burden of proving that the applicant failed to provide legal services that were of reasonable quality. Therefore, I conclude that the respondent owes \$3,945.54 to the applicant.
19. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest under the COIA on the \$3,945.54 owed. As to when this interest should be calculated from, I note the applicant's demand letters to the respondent confirmed that outstanding balances were due within 30 days. I take this to mean each payment was due 30 days after the date of the corresponding invoice.
20. The COIA allows interest to be paid at a rate considered appropriate in the circumstances. I acknowledge there were numerous invoices issued between September 2017 and June 2018. Keeping in mind that the applicant did not seek a specific sum of interest, and the tribunal's mandate of proportionality in its decision making, I am satisfied it is appropriate to consider all the amounts owing as being due on July 13, 2018. This is 30 days after the applicant's final demand email sent June 13, 2018. Court order interest is therefore calculated from July 13, 2018 until the date of this decision. This equals \$111.06.
21. 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. The applicant was successful, so I find it is entitled to the \$175.00 it paid in tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,231.60, broken down as follows:
  - a. \$3,945.54 in debt as payment for legal services and related expenses,
  - b. \$111.06 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175.00 for tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

---

Chad McCarthy, Tribunal Member