



# Civil Resolution Tribunal

Date Issued: March 6, 2020

File: SC-2019-005642

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Laubscher v. Dr. Gail J. Chow Inc.*, 2020 BCCRT 268

BETWEEN:

ROLF LAUBSCHER

**APPLICANT**

AND:

DR. GAIL J. CHOW INC.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about dental services. The applicant, Rolf Laubscher, claims the respondent provided negligent dental treatment during a root canal. The applicant claims \$2,963 for dental treatment expenses and pain and suffering.

2. The respondent, Dr. Gail J. Chow Inc., denies the applicant's claims. The respondent argues that they provided appropriate emergency dental services and all dental treatment was within the standard of care. The respondent also argues that the applicant did not file this dispute in time.
3. The applicant is self-represented. The respondent is represented by a lawyer, Lori Leung.

## **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, 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.

## ISSUES

8. The issues in this dispute are:
  - a. Did the applicant file this claim within the time required by the *Limitation Act*?
  - b. Did the applicant suffer injuries as a result of dental malpractice during the respondent's root canal treatment? If so, how much compensation is the applicant owed?

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove their case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

### ***Limitation Act***

10. The respondent argues that this dispute was not filed on time. The *Limitation Act* applies to tribunal claims and establishes a basic limitation period of 2 years. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful. I find that this 2-year limitation period applies to the applicant's claims.
11. The respondent previously made a request to dismiss this dispute for being late. A preliminary decision was made by this tribunal on November 4, 2019 denying this request. Although the preliminary decision is not binding on me, I also find that this dispute was timely filed for the reasons stated below.
12. The applicant submitted his tribunal dispute application on July 31, 2019. A limitation period begins to run the day after a claim is discovered. Accordingly, the applicant must have discovered his claim on or after July 31, 2017, or else it is out of time and barred by the *Limitation Act*.

13. The respondent argues that this claim relates to dental treatment provided on June 26, 2017 which was more than 2 years before this dispute was filed. However, the applicant claims that he did not discover the respondent's negligence until he received further dental treatment in February 2018. The applicant claims that he experienced pain during the February 2018 treatment which made the applicant realize that the respondent's root canal was not effective or necessary.
14. Under the *Limitation Act*, a person discovers a claim when that the person had knowledge of the claim or reasonably ought to have known about the claim. I am satisfied that the applicant discovered his claim against the respondent in February 2018 when he felt pain during further dental treatment. Accordingly, I find that this dispute was filed in time.

### ***Dental Malpractice***

15. The applicant claims that the respondent provided negligent treatment when they performed a root canal on June 26, 2017. The applicant claims that he went to the respondent's dental clinic for relief of dental pain. The applicant says that the respondent recommended a root canal which was performed the same day. The applicant claims that he suffered pain during the treatment. The applicant also claims that the respondent rushed the treatment because the dentist was in a hurry to leave.
16. The applicant claims that the respondent did not complete the root canal and he was told that he needed to go to another dentist to complete the treatment. The applicant claims that the respondent told him that he had nerve damage and he needed a root canal. However, he claims that he later discovered that his pain was not caused by nerve damage and the root canal was unnecessary.
17. The respondent says that they provided appropriate emergency dental care for the applicant, namely a pulpectomy which was the first step in a root canal. The respondent says the applicant knew he would have to go elsewhere for the

completion of the root canal. The respondent denies it caused any injuries to the applicant.

18. To prove negligence, the applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
19. The applicant's allegations concern professional negligence in that he says that the respondent's services fell below the standard of a reasonably competent dentist. In such cases, it generally is necessary for an applicant to prove a breach of the applicable standard of care with expert evidence as this is outside the knowledge or expertise of an ordinary person (see, for example, *ter Neuzen v. Korn*, 1995 Canlii 72 (SCC) and *Bergen v. Guliker*, 2015 BCCA 283.)
20. In this matter, the applicant has not provided any expert evidence to prove that the respondent acted below the standard of a reasonably competent dentist. The applicant's complaint of pain during the respondent's treatment does not prove that the respondent acted below the standard of care.
21. In addition, the applicant's opinion that the respondent's root canal was unnecessary is not persuasive. The applicant argued that pain experienced during treatment, despite multiple injections of anesthetics, proves that nerve damage was not the cause of pain. The applicant argues that this proves that the root canal was unnecessary. However, the dental indications for a root canal are outside the expertise of ordinary persons. As such, I find that the applicant has not proved that the respondent's treatment was below the standard of care.
22. Given my conclusions above, I dismiss the applicant's claims, and do not need to address his claimed remedies in any detail.
23. 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. Since neither party requested reimbursement of tribunal fees or claim dispute-related expenses, no reimbursement is ordered.

## **ORDER**

24. I order the applicant's claims, and this dispute, dismissed.

---

Richard McAndrew, Tribunal Member