



# Civil Resolution Tribunal

Date of Original Decision: May 11, 2020

Date of Amended Decision: May 13, 2020

File: SC-2020-000855

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rego v. I B Skov Petersen, dba ISP Employment Law*, 2020 BCCRT 513

B E T W E E N :

ASHLEY REGO

**APPLICANT**

A N D :

I B SKOV PETERSEN, Doing Business As ISP EMPLOYMENT LAW

**RESPONDENT**

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## **AMENDED<sup>i</sup> REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

### **INTRODUCTION**

1. This is a dispute over legal services and fees.
2. The applicant, Ashley Rego, paid the respondent, I B Skov Petersen, dba ISP Employment Law, a \$2,000 retainer toward future legal services. The applicant says

that the respondent did not deliver the services promised and asks to be reimbursed \$1,000. The applicant is self-represented.

3. The respondent says that it delivered the legal services agreed to and billed the applicant \$2,766.44. The respondent agrees to forgive the outstanding \$766.44 balance and asks that the dispute be dismissed. The respondent is also 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. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim if the tribunal does not have jurisdiction over the matter. Under section 11 the tribunal may refuse to resolve if another legally binding or dispute resolution process would be more appropriate.
6. The respondent submits that the tribunal does not have jurisdiction to conduct a review of the lawyer's account, under sections 70-73 of the *Legal Profession Act* (LPA). The respondent says that only the superior courts have this jurisdiction and the applicant has not pursued a review of the lawyer's bill in the British Columbia Supreme Court (BCSC).
7. While the LPA provides an alternative means for a client to review a lawyer's bill, that process is not mandatory. The LPA does not restrict a client's right to bring a claim in negligence or breach of contract in the provision of legal services: *McKenzie & Company v. Leung*, 2004 BCPC 98. I find that the tribunal has the

necessary small claims jurisdiction to resolve this dispute, which is essentially a damages claim. At paragraph 19 of the non-binding but persuasive decision *Airborne Assets v. MANI SANDHU & ASSOCIATES LAW CORPORATION et al*, 2019 BCCRT 764, another tribunal member reached the same conclusion. I find I have jurisdiction over this dispute, and that the tribunal is an appropriate legally binding process for the resolution of this dispute. So, do not need to refuse to resolve it.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I am satisfied that an oral hearing is not required as I can fairly decide the dispute based on the evidence and written submissions provided.
9. 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.
10. 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**

11. The issue in this dispute is whether the respondent must refund the applicant \$1,000 for allegedly failing to provide the legal services agreed to.

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the burden of proof is on the applicant to prove his claim on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what is necessary to explain my decision.

13. On November 22, 2019 the applicant signed a retainer agreement with the respondent. In the agreement the respondent agreed to review and consider all the relevant facts and documents relating to the applicant's legal matter and provide an opinion on options. The respondent's fee would be based on time spent on the file, with the opportunity to bill more in some situations, plus expenses. The respondent's hourly rate was \$325. The respondent required a \$2,000 retainer, which the applicant paid on November 22, 2019.
14. The parties agree they had a 90-minute meeting on December 5, 2019 and that the applicant gave the respondent 3 documents and 3 binders to review. Photographs show that the labelled and tabbed binders are between 1 and 3 inches thick and mostly full of paper. I accept the respondent's estimate that the binders contained over 1,000 pages of paper.
15. The applicant says that, at the meeting, he asked the respondent to prepare and send a letter asking a third party to conduct an investigation into the applicant's legal concerns. The respondent said that the outcome would depend on the facts of the case, but agreed that drafting the requested letter of complaint was one of the options.
16. The parties met again on January 13, 2020 for 90 minutes. At the meeting the respondent asked the applicant to prepare a draft written complaint, so that the applicant could understand the legal requirements for success, and to eliminate baseless allegations. The respondent says that at least one of the applicant's allegations was contrary to the applicant's email evidence. The applicant says that he re-explained all the facts at the second meeting, which the respondent did not seem to grasp. The applicant acknowledges that he also added further information to his earlier concerns.
17. By email on January 15, 2020 the applicant provided the respondent with his summary of 4 incidents. The applicant asked the respondent to let him know if he was unable to prepare the final document to send over to the other party.

18. On January 16, 2020 the respondent advised the applicant that the document needed a lot of work and that he would provide some guidance in the document to “get the process started” and gave the applicant a new draft. The respondent told the applicant that the retainer would need to be refreshed.
19. The applicant says that all the respondent did was change the font and copy the applicant’s document. I disagree. The respondent’s draft includes formal headings, the legal elements required to prove the applicant’s legal claim, and several questions and comments to prompt more information and detail. The January 16, 2020 document shows the respondent’s legal analysis of the applicant’s set of facts.
20. On January 17, 2020 the applicant asked the respondent not to work any further on his file and to send an account for legal services so far. The applicant terminated the agreement, in writing, on January 19, 2020.
21. I find that the applicant has failed to prove that the respondent contracted to produce and deliver to the third party the requested complaint letter. The written retainer agreement does not set out a flat rate fee for a specific service such as a letter or formal complaint. The agreement sets out that the respondent will review the materials and provide an opinion on the best course of action and will bill for the time spent doing that work. Further, the applicant’s January 15, 2020 email to the respondent is inconsistent with his argument that he was surprised and upset when the respondent failed to produce a draft letter at the January 13, 2020 meeting. While I accept that a formal complaint letter is how the applicant wanted to move forward with his allegations, I find that there was no agreement for the respondent to produce such a final document within a set time frame or for the \$2,000 paid by the applicant.
22. The question then becomes whether the respondent’s fee falls within the terms of the written retainer agreement and whether the fee is reasonable. Although this is not a review of a lawyer’s bill, I find the same type of factors set out in section 71(4) of the LPA apply to considering whether the fees were reasonable. This includes consideration of the written retainer agreement, the respondent’s hourly rate, the

complexity of the matter, and other factors. I have also considered that the respondent has agreed to forgive \$766.44 of the fee, which is equal to approximately 2 hours of work.

23. On January 20, 2020 the respondent sent the applicant an invoice for \$2,766.44 for services rendered between December 2, 2019 and January 17, 2020, including tax. The invoice set out a total time of 7.6 hours and detailed the time spent on each email and telephone call with the client, the two meetings, and a total of 3.5 hours reviewing documents, policy, and drafting the January 16, 2020 document.
24. The applicant says that the invoiced breakdown does not justify the charges and that the respondent spent, at most, 3 hours on the file. However, the applicant has agreed that he spent 3 hours meeting with the respondent, as well as a further 21 minutes on the telephone, and he also refers to email correspondence and document preparation. Based solely on the agreed upon interactions between the parties, I find the respondent spent more than 3 hours on the applicant's file.
25. The respondent provided a copy of the applicant's client file, which contains the email chains listed on the invoice, draft documents, notes from the meetings, and research into the law related to the applicant's underlying allegations. The emails in the file correspond with the emails billed for on the invoice. Photographs of the applicant's binders confirm that there was a large volume of documents to be reviewed and I find that a total of 3.5 hours for an experienced lawyer to review those documents is reasonable.
26. In summary, after reviewing the client file, the statement of account, and the itemization of work done, and with consideration of those factors set out in section 71(4) of the LPA, I find the respondent's fee reasonable in the circumstances. I also find that the invoice is consistent with the parties' written contract. I dismiss the applicant's claim for a refund of \$1,000 from his retainer.
27. 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. The applicant was unsuccessful and so I dismiss his claim for tribunal fees. Although the respondent was successful, he did not pay any tribunal fees or claim any expenses.

## **ORDER**

28. I dismiss the applicant's claims and this dispute.

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Sherelle Goodwin, Tribunal Member

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<sup>i</sup> I have amended this decision to correct the spelling of the respondent's last name in the style of cause and paragraph 2 so that it is consistent with the spelling set out in the Dispute Notice. I make these corrections in accordance with section 64 of the CRTA.