



# Civil Resolution Tribunal

Date Issued: December 16, 2021

File: SC-2021-003845

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Centennial Law Corp. v. St.Luke*, 2021 BCCRT 1313

B E T W E E N :

CENTENNIAL LAW CORP.

**APPLICANT**

A N D :

DAVID ST.LUKE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Roy Ho

## INTRODUCTION

1. This dispute is about payment for legal services. The applicant law firm, Centennial Law Corp. (Centennial), claims \$2,998.24 as payment for the legal services it provided to the respondent David St. Luke.

2. Mr. St. Luke says Centennial failed to adequately advise him about the B.C. Provincial Court's (BCPC) jurisdiction because it had determined that his legal matter should have been heard in the B.C. Supreme Court (BCSC). He says he should not have to pay the outstanding bill because Centennial started proceedings in the wrong court.
3. Centennial is represented by its articling student, Shamin Aidun. Mr. St. Luke is self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says the CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. Mr. St. Luke submitted records from The Law Society of British Columbia (LSBC). Centennial says these records are privileged under section 87 of the *Legal Profession Act* (LPA) and I ought to exclude them in this dispute. Under LPA section 87(1), it states that a “report” includes any document, minute, note, correspondence or memorandum created by LSBC. Section 87(2) says such a “report” is privileged and cannot be disclosed or produced in “any proceeding”, which I find includes a CRT dispute, without Centennial’s written consent. As there is no evidence Centennial gave written consent, and it is clear from Centennial’s submissions that it does not consent, I find the records are privileged. Therefore, I have not admitted the records in evidence and have not considered them in my decision.

## **ISSUES**

9. The issues in this dispute are:
- a. Did Centennial fail to properly advise Mr. St. Luke on the BCPC’s jurisdiction for his legal matter?
  - b. To what extent, if any, is Centennial entitled to the claimed \$2,988.24 for legal services?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant, Centennial must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. I note other than the LSBC records, Mr. St. Luke did not submit any other evidence.
11. Mr. St. Luke retained Centennial to act on his behalf to pursue an outstanding payment from a tractor he had sold. Centennial obtained a default judgment in the BCPC in Mr. St. Luke’s favour, which was later overturned on the application of opposing counsel. The BCPC’s jurisdiction was not raised as an issue at the default decision stage or when the BCPC made the decision to set aside the default

judgement. As the evidence shows, at trial, the BCPC asked counsel for submissions about its jurisdiction to hear Mr. St. Luke's matter. Ultimately, the BCPC determined it did not have jurisdiction to hear the merits of Mr. St. Luke's small claims action and that he was to proceed in the BCSC. None of this is disputed.

12. As noted, Centennial claims \$2,988.24 for outstanding legal services. Its invoice, dated October 3, 2019, showed Centennial billed Mr. St. Luke for telephone calls, reviewing emails and court records, meetings with Mr. St. Luke, correspondence with opposing counsel, legal research, preparing for trial, attending court and making submissions on the jurisdictional issue. Centennial's time records showed that it billed Mr. St. Luke 7.8 hours for the work done, plus some minor disbursements, between May 28 to July 18, 2019. Based on the undisputed history described earlier, I find the amount of time Centennial spent was not excessive and the work done was reasonable. As discussed below, Mr. St. Luke does not dispute the work that Centennial performed, but rather the necessity of it.
13. However, Centennial acknowledges in its submissions that it overcharged Mr. St. Luke an extra \$30 per hour, so it reduces its claimed amount by \$262.08 including taxes. Based on the parties' signed retainer agreement and Centennial's time records, I agree that Centennial overcharged Mr. St. Luke \$262.08. So, I find the total invoiced amount should equal \$2,726.16, rather than the claimed \$2,988.24.
14. Mr. St. Luke says he should not have to pay this invoice because of Centennial's failure to adequately advise him on the BCPC's jurisdiction. I infer from Mr. St. Luke's submissions he argues he would not have spent money to pursue his claim in the BCPC if he had been properly advised by Centennial. I find in essence Mr. St. Luke alleges that Centennial was negligent in providing legal services.
15. The burden is on Mr. St. Luke to prove Centennial's work was deficient, which I find includes whether it should have advised Mr. St. Luke on the BCPC's jurisdiction. The undisputed evidence is that Centennial obtained a default judgment on behalf of Mr. St. Luke in the first instance. So, Centennial was initially successful in bringing BCPC proceedings. In that regard, I am unable to conclude that it was obvious that

Centennial was negligent to start proceedings in the BCPC, and that it should have advised Mr. St. Luke about a jurisdictional issue. So, I find expert evidence would be required to prove what the standard of care of a reasonable lawyer in the same circumstances would be (see *Bergen v. Guliker*, 2015 BCCA 283). However, there is none here. As noted, Mr. St. Luke submitted no evidence other than the LSBC records, which I have not admitted into evidence due to statutory privilege.

16. Given my conclusion above, I find Centennial is entitled to payment on its invoice of \$2,726.16.
17. In Centennial's invoice, it charged 1.5% monthly interest on Mr. St. Luke's outstanding amount after 30 days. Centennial claims this as contractual interest. However, the parties' retainer agreement in evidence does not show that the parties agreed on interest at the time of the contract. A right to charge interest cannot be unilaterally imposed in an invoice (see *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775). Therefore, I dismiss Centennial's contractual interest claim. Where there is no agreement on interest, the *Court Order Interest Act* (COIA) applies to the CRT. I find Centennial is entitled to pre-judgment COIA interest on the \$2,726.16, from October 3, 2019, the date of its invoice, to the date of this decision. This equals \$57.51.
18. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Centennial is entitled to reimbursement of \$125 in CRT fees. Neither party claimed disputed-related expenses.

## **ORDERS**

19. Within 30 days of the date of this order, I order Mr. St. Luke to pay Centennial a total of \$2,908.67, broken down as follows:
  - a. \$2,726.16 in debt,

- b. \$57.51 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

20. Centennial is entitled to post-judgment interest, as applicable.

21. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

22. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Roy Ho, Tribunal Member