



# Civil Resolution Tribunal

Date Issued: April 4, 2022

File: SC-2021-007085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eng v. Remedios & Company Law Corporation*, 2022 BCCRT 377

**B E T W E E N :**

EDWARD ENG

**APPLICANT**

**A N D :**

REMEDIOS & COMPANY LAW CORPORATION

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is over a paid retainer fee for legal services. The applicant client, Edward Eng, claims a refund of \$2,500 from the \$3,920 retainer paid to the respondent law firm, Remedios & Company Law Corporation (RCLC).
2. Mr. Eng says he hired RCLC to conduct a trial for him, a company, and another person (collectively, the plaintiffs), with the plaintiffs doing all of the preparation work. Mr. Eng says RCLC later advised it would not represent the plaintiffs at trial and so Mr. Eng seeks the \$2,500 refund out of the \$3,920 paid. Mr. Eng says the \$1,420 difference is reasonable to pay for RCLC's "preliminary enquiries", based on a \$270 hourly rate that Mr. Eng says he agreed to.
3. RCLC says Mr. Eng's claim is out of time, as discussed below. Otherwise, RCLC says it was retained to review all documentation and provide legal advice to Mr. Eng, and that it did so. RCLC says this was done based on time capped to a \$3,500 legal fee as per the parties' agreement. RCLC says its completed work exceeded this figure and it billed slightly lower than the capped fee. RCLC says had it proceeded to represent the plaintiffs at trial, it would have required a further retainer.
4. Mr. Eng is self-represented. RCLC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. 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). CRTA section 2 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.
6. CRTA section 39 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. 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.

7. CRTA section 42 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.
8. 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.
9. Initially, Mr. Eng also named lawyer Anthony Remedios as a respondent. However, with all parties' agreement Mr. Eng withdrew those claims. So, the style of cause above reflects the only remaining respondent, RCLC.
10. I pause to note that RCLC argues that this dispute should be heard in the BC Provincial Court or BC Supreme Court (BCSC) based on Part 8 of the *Legal Profession Act* (LPA). I disagree. While the LPA specifies the BCSC as the court to hear fee reviews under the LPA, this dispute is not a fee review. Rather, this is a civil claim for debt or damages under a contract, which I find squarely falls within the CRT's jurisdiction under CRTA section 118.

## **ISSUES**

11. The issues in this dispute are whether Mr. Eng's claims are out of time, and if not, whether RCLC must refund \$2,500 from the legal fees retainer Mr. Eng paid.

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, as the applicant Mr. Eng must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties'

submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Eng chose not to provide a final reply submission, despite having the opportunity to do so.

13. I turn first to whether Mr. Eng's claim was filed in time or not. Mr. Eng filed his application to the CRT and paid the applicable fee on September 14, 2021. Under *the Limitation Act* (LA) which applies to the CRT, there is a 2-year limitation period in BC. CRTA section 13 says the running of time stops when the applicant files their CRT application and pays the associated fee. This means that if Mr. Eng's claim arose before September 14, 2019 (2 years before he applied to the CRT), it was filed out of time.
14. In the Dispute Notice that started this proceeding, Mr. Eng said he received a September 16, 2019 letter from RCLC that advised him that RCLC would not represent him at trial. Mr. Eng says given this information he asked for a refund of the retainer. He says his claim therefore began on September 16, 2019.
15. RCLC says that on August 30, 2019 it mailed and emailed Mr. Eng its invoice dated the same date. RCLC argues that the running of time for this claim started when Mr. Eng received that invoice, and so it says his claim is out of time. I agree, for the following reasons.
16. RCLC's August 30, 2019 invoice shows its "fee" was "capped as agreed" to \$3,470.36. This is consistent with RCLC's August 28, 2019 retainer letter to Mr. Eng, which had required payment of a \$3,920 retainer. With disbursements and taxes, RCLC's invoice showed \$3,920 was due and that the entire amount was transferred from the retainer funds held in trust, leaving a zero balance owing.
17. RCLC's submitted evidence shows it emailed the August 30, 2019 invoice to Mr. Eng in the afternoon on August 30, 2019. Mr. Eng does not deny he received that email on that date and as noted chose to make no final reply submission. So, I find he received it on August 30, 2019.

18. Further, on September 6, 2019, RCLC emailed Mr. Eng summarizing their meeting that morning. RCLC's assigned lawyer detailed the recommended next steps in the underlying litigation, including RCLC's anticipated fees. Again, at this point Mr. Eng knew the retainer had been already fully applied to RCLC's earlier work and that there was nothing left.
19. RCLC's September 16, 2019 letter, which Mr. Eng appears to rely on as the start date for when the limitation period began to run, only confirmed what the parties discussed at the September 6 meeting and provided only minor further details beyond the September 6, 2019 email.
20. Mr. Eng's argument is that RCLC advised it would not represent him at trial because he had done much of the preparation work. I find this inconsistent with the contemporaneous documentation from RCLC, detailed above. I find it more likely that RCLC was prepared to represent Mr. Eng at trial, if he provided a further retainer given the \$3,920 retainer had been depleted. It was only on September 17, 2019 that RCLC's assigned lawyer advised Mr. Eng that RCLC could not assist the plaintiffs "without sufficient preparation" which I infer referred to RCLC requiring the further retainer to take its own steps to ensure the matter was ready for the scheduled December 2019 trial.
21. I find Mr. Eng's claim for a refund of part of the retainer arose when he received the August 30, 2019 invoice showing RCLC had applied the entire retainer to work already completed. In any event, I find the claim had certainly arisen by the time Mr. Eng met with RCLC on September 6, 2019 when he was told that in order to proceed to trial he could expect to pay further legal fees.
22. Given the above, I find Mr. Eng's claim is out of time because it arose before September 14, 2019. Put another way, for Mr. Eng's claim to have been filed in time he needed to have filed it no later than September 6, 2021, if not August 30, 2021. Either way, his claim is too late. It follows that I do not need to address the merits of Mr. Eng's claim.

23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Eng was unsuccessful I dismiss his claim for reimbursement of CRT fees. RCLC did not pay CRT fees and no dispute-related expenses were claimed.

## **ORDER**

24. I dismiss Mr. Eng's claims and this dispute.

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Shelley Lopez, Vice Chair