



# Civil Resolution Tribunal

Date Issued: May 4, 2022

File: SC-2021-008619

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Toews v. Cowan*, 2022 BCCRT 528

BETWEEN:

LEANNE TOEWS

**APPLICANT**

AND:

CHRIS COWAN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about professional services. The applicant, Leanne Toews, provided expert court testimony on behalf of the respondent, Chris Cowan. Ms. Toews says Mr. Cowan failed to pay the balance of her invoice, \$739.41.

2. Mr. Cowan says Ms. Toews was paid in full before the court appearance and denies owing any more money.
3. The parties are each 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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.

## **ISSUE**

8. The issue in this dispute is whether Mr. Cowan owes Ms. Toews \$736.41 for professional services received.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Ms. Toews must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed what is necessary to explain my decision.
10. It is undisputed that on August 28, 2019, the parties signed a Professional Services Agreement (PSA) for counselling services related to Mr. Cowan’s ongoing legal matter. The PSA and accompanying Fee Schedule outline that Ms. Toews’ time would be billed at \$120 per hour, with court appearances billed at \$240 per hour. The PSA further stated that court appearances would require a deposit/retainer to be paid in advance, and any unused balance would be refunded, if applicable.
11. It is also undisputed that in January 2021, Mr. Cowan’s legal counsel, VH and SA, required Ms. Toews’ appearance in court on Mr. Cowan’s behalf, and Ms. Toews was formally subpoenaed. Ms. Toews was out of town at the time, and due to scheduling conflicts, the trial was adjourned. Ms. Toews ultimately attended trial to give expert evidence on February 22, 2021. When scheduling Ms. Toews’ appearance in court, VH assured Ms. Toews in a February 2, 2021 email that Mr. Cowan was aware he would have to pay Ms. Toews’ “regular professional fees” for the attendance.
12. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will generally not be liable under a contract they make between the principal and third party. Here, Mr. Cowan’s agents, his lawyers VH and SA, had actual or apparent authority to enter into contracts on Mr. Cowan’s behalf, such that Mr. Cowan should

be held responsible. Mr. Cowan signed the PSA himself, and it is not disputed that he was aware of and consented to his lawyers retaining Ms. Toews for further services, including the court appearance at issue. I find Mr. Cowan is obligated to pay for Ms. Toews' work that his lawyers requested on his behalf, under the PSA that he signed.

13. In advance of the rescheduled trial, Ms. Toews, through her business manager RB, sent VH and SA a retainer invoice for 8 hours at \$120 per hour, for a total of \$1,008 (\$960 plus \$48 GST). Mr. Cowan paid this amount directly to Ms. Toews.
14. On February 23, 2021, the day after Ms. Toews' court appearance, RB sent Mr. Cowan and his legal counsel a final bill for services rendered. The invoice included 8.5 hours of preparation time at \$120 per hour, 2.75 hours for court testimony at \$240 per hour, plus \$32.20 for 322 pages of document preparation. After reducing the invoice by the \$1,008 retainer, the outstanding balance, including tax, was \$739.41, the amount claimed in this dispute.
15. After receiving the final bill, Mr. Cowan expressed concern that there was any amount owing above the paid retainer. In response to Mr. Cowan's concerns, Ms. Toews provided multiple detailed breakdowns of the time billed for the court appearance.
16. Mr. Cowan says he never agreed to pay for preparation time, only the time Ms. Toews actually spent in court. He says the \$1,008 more than covers the services he was provided and says he does not owe any more money. I disagree.
17. I find the time Ms. Toews spent was reasonable in the circumstances. Although Mr. Cowan says he only agreed to pay for the actual time spent in court and not preparation time, I find preparation time is reasonably billable for such an attendance.
18. I find Mr. Cowan must pay Ms. Toews the \$739.41 invoice balance for professional services rendered.
19. Ms. Toews also claims contractual interest at 2% monthly, as set out in the PSA. The PSA does not set out an annual interest rate. Section 4 of the federal *Interest Act*

says that when an interest rate is expressed as a rate for a period of less than a year and the contract does not say what the equivalent annual rate is, the maximum allowable interest is 5% per year. Contractual interest cannot be unilaterally imposed in an invoice and must be set out in the parties' agreement. So, I find I may only order 5% annual interest. Calculated from February 23, 2021, this equals \$44.06.

20. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Toews was successful, I find that she is entitled to reimbursement of the \$125 she paid in tribunal fees. Ms. Toews also claims \$12.27 for registered mail to serve Mr. Cowan with the Dispute Notice. I find this expense was reasonable and so I order Mr. Cowan to reimburse it.

## **ORDERS**

21. Within 21 days of the date of this decision, I order the respondent, Chris Cowan, to pay the applicant, Leanne Toews, a total of \$920.74, broken down as follows:
- a. \$739.41 in debt,
  - b. \$44.06 for contractual interest at 5% per year, and
  - c. \$137.27, for \$125 in tribunal fees and \$12.27 in dispute-related expenses.
22. Ms. Toews is also entitled to post-judgment interest, as applicable.
23. 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.

24. 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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Andrea Ritchie, Vice Chair