



# Civil Resolution Tribunal

Date Issued: June 22, 2022

File: SC-2021-007419

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cloutier v. Debt Control Agency Inc.*, 2022 BCCRT 724

BETWEEN:

DENNIS CLOUTIER

**APPLICANT**

AND:

DEBT CONTROL AGENCY INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about payroll deductions. The applicant, Dennis Cloutier, says his employer, the respondent, Debt Control Agency Inc., improperly deducted money from his paycheques. The applicant seeks repayment of \$2,969.27 for allegedly improper deductions, plus \$2,029.73 in punitive damages.

2. The respondent says the applicant agreed to the deductions made and that the deductions were a mandatory term of his employment. It seeks that this dispute be dismissed.
3. The applicant is self-represented. The respondent is represented by an employee.

## **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.

## ISSUES

8. The issues in this dispute are:
  - a. To what extent, if any, is the applicant entitled to repayment of \$2,969.27?
  - b. Is the applicant entitled to punitive damages?

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his 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 those necessary to explain my decision.

### ***Is the applicant entitled to repayment of \$2,969.27?***

10. In April 2021 the applicant sought employment with the respondent company. The respondent discovered that the applicant had an outstanding debt that was within the company’s system. As a term of the applicant’s employment, he had to either pay the debt off in full or negotiate a payment plan agreeable to the respondent. None of this is disputed.
11. The applicant says the respondent improperly deducted \$2,969.27 from his pay, but does not explain how he calculated that amount. The respondent says it deducted a total of \$2,195.60, which included \$1,830.89 for the outstanding debt and \$347 for licensing fees.
12. On April 28, 2021, the applicant signed an agreement that he would pay \$100 per paycheque plus 50% of any monthly commissions towards the outstanding debt. It is undisputed the applicant failed to make payments as required, so on June 30, 2021 the parties amended the agreement so that the respondent automatically deducted the payments from the applicant’s paycheques.

13. The applicant says the respondent was supposed to give him a “grace period” and not deduct anything from his June paycheques, but then did so anyway. So, although he does not dispute owing the debt, he says the respondent collected it improperly. In support of this argument, the applicant provided a July 30, 2021 paycheque that shows the respondent deducted 50% of his commission. Although the applicant argues this was improper, the letter in evidence about the “grace period”, signed by both the applicant and a representative of the respondent, clearly states that the automatic payroll deductions would restart on July 16, 2021. I find the applicant has not shown any deductions were made in June. There is no allegation any of the other deductions for the debt repayment were improper. So, I find the respondent did not make any improper deductions related to the applicant’s outstanding debt.
14. For the \$347 deduction for licensing fees, the respondent provided the parties’ signed employment agreement which states that a term of the applicant’s employment was that the respondent would pay upfront for licensing in any necessary provinces, and the amount would be recouped through payroll deductions. This is not disputed. I find the applicant agreed to this term of employment, and that the respondent properly deducted the licensing fees.
15. I dismiss the applicant’s claims about improper deductions.

### ***Punitive damages***

16. The applicant claims \$2,029.73 in punitive damages. The applicant argues the respondent’s improper payroll deductions and termination of his employment while he was struggling with medical issues caused him financial hardship, potential eviction, lack of medical supplies and food, and negatively impacted his abilities as a caregiver.
17. Punitive damages are to punish a “morally culpable” respondent and are usually only granted for malicious and outrageous acts (see: *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68). Punitive damages should be resorted to only in

exceptional cases and with restraint (see: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at paragraph 69).

18. I have found above that the respondent made the payroll deductions according to the parties' agreement, and were not improper. I also find the respondent terminated the applicant's employment within the probationary period. Additionally, I find the respondent granted the applicant extensions and grace periods, though it was not obligated to do so. I find the respondent acted reasonably in its dealings with the applicant. I find there is no evidence to support a punitive damages claim. I dismiss this claim.
19. I note that in his reply submissions on the punitive damages claim the applicant alleges the respondent improperly applied a British Columbia Supreme Court garnishing order to one of his paycheques. As this argument was only brought up in reply, the respondent did not have an opportunity to respond. So, I have not addressed the issue in this decision, and I make no findings about it.

### ***Tribunal fees and expenses***

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 the applicant was not successful, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses. The respondent did not pay tribunal fees or claim any dispute-related expenses.

## **ORDER**

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

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Andrea Ritchie, Vice Chair