



# Civil Resolution Tribunal

Date Issued: September 8, 2022

File: SC-2022-000498

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Graham C. Laschuk Law Corporation v. Filgas*, 2022 BCCRT 996

B E T W E E N :

GRAHAM C. LASCHUK LAW CORPORATION

**APPLICANT**

A N D :

ANNE MARIE FILGAS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about unpaid legal fees. The applicant, Graham C. Laschuk Law Corporation (Laschuk), says the respondent, Anne Marie Filgas, refused to pay the balance owing without justification. It seeks an order for payment of \$1,000 plus 18% yearly contractual interest.

2. Mrs. Filgas disagrees. She says Laschuk overcharged for its services and acted unprofessionally. She also says Laschuk waived any entitlement to amounts owing because it waited several months before issuing a final invoice.
3. An employee or principal represents Laschuk. Mrs. Filgas represents herself.
4. For the reasons that follow, I find Laschuk has proven its claims.

## **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). 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.
6. 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. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
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.

## **ISSUE**

9. The issue in this dispute is whether Mrs. Filgas owes the claimed legal fees and interest, and if so, whether any reduction or setoff is appropriate.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this Laschuk as the applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I begin with the undisputed background. In late April 2020, Mrs. Filgas and Laschuk's principal, Graham Laschuk, signed a written contract for legal services. Under the terms, Laschuk agreed to represent Mrs. Filgas in a legal matter. Mrs. Filgas agreed to pay Laschuk \$400 per hour for Mr. Laschuk and \$75 per hour for its legal assistant, plus tax. The contract said that Laschuk's invoices were due immediately and would include late interest after 30 days at 18% yearly. Mrs. Filgas agreed pay a \$5,000 retainer. She also agreed that the retainer was not an estimate of Laschuk's total fees and that she was not relying on any estimate of fees to retain Laschuk.
12. Laschuk claims for the balance owing under a June 19, 2020 invoice for \$4,625.05. It shows that Laschuk's work included the following: drafting a response and counterclaim, preparing for a judicial case conference (JCC) initiated by Mrs. Filgas'

family member, ST, and ST's lawyer, and reviewing a draft Form F8. This form is an affidavit about a person's financial status.

13. Mrs. Filgas says Laschuk delayed sending invoices. I find this unsupported by the evidence. In particular, I find that for the invoice in dispute, Laschuk did not delay as it emailed the invoice on June 22, 2020. Laschuk's documents show that it then credited Mrs. Filgas' partial payments of \$3,135.20 on June 22 and \$489.85 on July 17, 2020, leaving the \$1,000 claimed balance owing.
14. On July 6, 2020, Mr. Laschuk emailed Mrs. Filgas. He said Mrs. Filgas had not complied with his requests for her to come in and prepare for the JCC. He said they were now in a "danger zone" and that he needed her to respond by noon the next day, or he would withdraw. He also asked her to pay the outstanding balance under the June 19, 2020 invoice, make an appointment to meet over the next 36 hours to discuss the case, and replenish the trust account by \$5,000.
15. On July 7, 2020, Mrs. Filgas instructed Mr. Laschuk to "put everything on hold". She first told Laschuk that she was close to negotiating a settlement with ST without any lawyers' involvement.
16. Several days later, Laschuk withdrew from representing Mrs. Filgas in a July 13, 2020 email. Mr. Laschuk noted that he had spoken with Mrs. Filgas that day, and was advised that ST had apparently agreed to adjourn the JCC, though ST had been "flip-flopping" on this previously. Mr. Laschuk said Laschuk's reasons for withdrawing included 1) an inability to obtain instructions from Mrs. Filgas, 2) her refusal to attend Laschuk's office to complete the Form F8, 3) her inability to meet deadlines for preparing the brief for the JCC, and 4) her failure to provide a new retainer of \$5,000 by the deadline when asked.
17. The evidence before me indicates the JCC was ultimately adjourned, as expected. Several months later, on December 15, 2020, Laschuk sent emails to Mrs. Filgas advising that the June 19, 2020 invoice was overdue. It sent further reminder emails on May 14 and November 15, 2021. I find that Laschuk waited some time before

sending reminder emails about the amount owing. However, I disagree with Mrs. Filgas' submission that it waived payment of the amount owing. There is no evidence to support this.

18. Mrs. Filgas replied on December 17, 2021 email. She said Mr. Laschuk did not listen to her and unprofessionally withdrew in the middle of her matter.

***Does Mrs. Filgas owe the claimed legal fees and is any reduction or setoff appropriate?***

19. Laschuk uploaded its invoices and some of its work. This included the incomplete Form F8 and various emails to Mrs. Filgas. I find it likely Laschuk worked the invoiced hours as there is nothing to suggest otherwise.
20. Mrs. Filgas says Laschuk should have done more to limit legal bills and encourage mediation. She says Mr. Laschuk instead focused on "trying to get me to defend every allegation" and placing a certificate of pending litigation (CPL) on the family home. She also says Laschuk should have used its legal assistant to do more of the work. She said Laschuk provided an inaccurate estimate of how much some of the work would cost and should have provided more warning when her retainer was running out. She also says Mr. Laschuk acted unprofessionally by withdrawing on July 13, 2020.
21. In substance, I find Mrs. Filgas alleges professional negligence. Generally, in claims of professional negligence, expert evidence is required to prove the professional's standard of care and that the professional's conduct fell below that standard. The party alleging negligence has the burden to prove it.
22. I do not find it obvious that Laschuk's conduct breached the standard of care. The invoices and correspondence show ST took the initial steps to take Mrs. Filgas to court. Laschuk responded with what I find were fairly typical steps. These included drafting pleadings, including a counterclaim, and drafting and filing the CPL. Laschuk withdrew after Mrs. Filgas advised that ST had agreed to adjourn the JCC. So, I find at the time there was no pressing need for Laschuk to stay involved.

23. Importantly, Mrs. Filgas did not provide expert evidence about the standard of care. There is no evidence that Laschuk's bill exceeded industry standards. In the absence of such evidence, I find her claims of professional negligence are unproven.
24. Similarly, Mrs. Filgas says that Mr. Laschuk withdrew in an unprofessional manner. The conditions for withdrawal are outlined in the contract. I find Laschuk was entitled to withdraw under the contract's terms. Part 3 of the contract said that Laschuk could withdraw if, among other things, Mrs. Filgas failed to cooperate with a reasonable request or pay invoices on time. The June and early July 2020 emails show that Mrs. Filgas did not cooperate with Laschuk's requests for her to schedule a meeting to finalize the Form F8. She also did not pay the outstanding amount on the June 19, 2020 invoice, which Laschuk claims for here.
25. Further, Mrs. Filgas did not send any text messages or emails around this time objecting to Laschuk's withdrawal. The emails indicate she and ST decided to adjourn the JCC to resolve their dispute without lawyers. So, I find Laschuk's withdrawal is not a reason to reduce the amount payable.
26. Given my findings, I find it appropriate to order Mrs. Filgas to pay the balance owing of \$1,000.
27. Laschuk also claims for 18% yearly contractual interest, which is set out in the parties' contract and in the June 19, 2020 invoice. Laschuk says the interest equaled \$281.51 as of January 20, 2022.
28. Mrs. Filgas says this rate was non-negotiable and excessive. However, I find she agreed to pay it as she signed the contract. The contract says interest should apply 30 days from receipt of the email, so I award 18% yearly contractual interest from July 22, 2020 to the date of this decision. This equals \$384.16.
29. 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 Laschuk is entitled to reimbursement of \$125 in CRT fees.

30. Laschuk also claims \$11.60 as a dispute-related expense for sending registered mailed to Mrs. Filgas. I find this proven by a January 28, 2022 receipt and order Mrs. Filgas to pay it as well.

## **ORDERS**

31. Within 30 days of the date of this order, I order Mrs. Filgas to pay Laschuk a total of \$1,520.27, broken down as follows:

- a. \$1,000 in debt,
- b. \$383.67 in 18% yearly contractual interest, and
- c. \$136.60, for \$125 in CRT fees and \$11.60 for dispute-related expenses.

32. Laschuk is entitled to post-judgment interest, as applicable.

33. 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. 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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David Jiang, Tribunal Member