



Civil Resolution Tribunal

Date Issued: January 29, 2024

File: SC-2023-000739

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hampel v. Cortex Centre for Advanced Assessment Inc.*,
2024 BCCRT 87

B E T W E E N :

BRIAN HAMPEL

APPLICANT

A N D :

CORTEX CENTRE FOR ADVANCED ASSESSMENT INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Brian Hampel hired Cortex Centre for Advanced Assessment Inc. (Cortex) to conduct an independent psychological assessment and provide a report setting out the assessment's results. Mr. Hampel says Cortex's report did not address the issues he wanted addressed. So, Mr. Hampel says the report has no value to him. He seeks a

\$3,170 refund for the amount he paid Cortex for the assessment and report. Mr. Hampel is self-represented.

2. Cortex says that it completed the assessment and report in accordance with Mr. Hampel's request. So, it says Mr. Hampel is not entitled to a refund. Cortex is represented by a director.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 and that an oral hearing is not necessary.
5. 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.
6. Cortex's evidence includes a written statement from Dr. Lynn Alden, the doctor that completed Mr. Hampel's independent psychological assessment. Cortex says that in preparing her evidence and response to Mr. Hampel's arguments, Dr. Alden drew on confidential clinical documents that contain sensitive information. So, Cortex asks that the documents provided in this dispute only be viewed by those who need to in order to decide this dispute. Mr. Hampel did not address this request in his submissions. However, given the sensitive nature of this information, I find Cortex's request reasonable. CRTA section 61 allows the CRT to make any direction in

relation to a CRT proceeding. So, I direct that the CRT dispute file will be sealed to prevent future disclosure of any dispute-related documents.

ISSUE

7. The issue in this dispute is whether Mr. Hampel is entitled to a refund from Cortex for the psychological assessment he paid for, and if so what amount?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mr. Hampel must prove his claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

Background

9. The evidence shows that on December 8, 2021, Mr. Hampel completed a form on Cortex's website seeking a psychological assessment. In particular, Mr. Hampel said he was looking for a psychological assessment of "his situation" and how his work caused or contributed to his condition for a WorkSafeBC claim. Mr. Hampel listed a number of conditions he said he was diagnosed with and said he would like the psychologist to review his medical and therapy records and conduct an in person interview, if necessary.
10. By email the same day, AS from Cortex emailed Mr. Hampel and said that Cortex could certainly provide a psychological assessment. AS provided Mr. Hampel with details about Cortex's typical hourly rates, and said that an assessment would involve an interview, some testing, scoring and analysis, and feedback if desired. AS said that a report may be extra, depending on whether one is required and for what purpose. AS estimated a fee range between \$3,500 and \$4,000.
11. After exchanging further emails, Cortex arranged for Mr. Hampel to meet with Dr. Alden on January 7, 2022. AS further confirmed Dr. Alden's \$260 hourly rate. At

Cortex's request, Mr. Hampel provided relevant documents, including medical documents and documents relating to his previously denied WorkSafeBC claims.

12. On January 6, 2022, Mr. Hampel signed Cortex's informed consent form. The consent form noted that this would be an independent assessment, meaning that Dr. Alden had the responsibility to provide an objective evaluation and not to advocate for any party or individual.
13. After reviewing the provided documents, reviewing the results from Mr. Hampel's psychological testing, interviewing Mr. Hampel on multiple dates in January 2022 for a total of almost 5 hours, and interviewing his therapist and a former co-worker, Dr. Alden completed her assessment and recorded her findings in Cortex's February 4, 2022 report. In the 18-page report, Dr. Alden concluded that three factors were responsible for Mr. Hampel's emotional disorders, with 2 of them being related to Mr. Hampel's childhood experiences and the other being his work manager's communication style.
14. On February 16, 2022, Mr. Hampel emailed Dr. Alden, saying that he had reviewed the report and wondered if there was miscommunication about what he wanted. He clarified that what he was looking for was a psychological assessment of how his work caused or contributed to his condition.
15. Mr. Hampel had multiple communications with Dr. Alden and others at Cortex over the next few months, explaining his unhappiness with the report. In a March 5, 2022 letter, Dr. Alden told Mr. Hampel that she had given considerable thought to his request for a second report that would, in essence, record his personal thoughts about how his childhood experiences coloured how he interpreted work events. Dr. Alden said that Mr. Hampel had originally contracted with Cortex for an independent assessment relating to various WorkSafeBC decisions, but his stated goal for the second report was to communicate to his husband and his mother how his symptoms developed and why they continue. Dr. Alden said that she believed this task fell more into the domain of a therapist than of an independent assessor and declined Mr. Hampel's request.

16. In a later April 12, 2022 letter, Dr. Alden again addressed Mr. Hampel's concerns about Cortex's report. She reiterated that her opinion was based on the documents Mr. Hampel provided. Dr. Alden said that if Mr. Hampel had new evidence showing any traumatizing, bullying, harassment, or discriminatory actions, she would be happy to review those materials and possibly reconsider her opinion.
17. Ultimately Mr. Hampel requested Cortex provide him with a full refund, which Cortex denied.

Breach of Contract and Negligence

18. It is not clear whether Mr. Hampel bases his refund claim in negligence or breach of contract, so I address both.
19. In contracts for professional services, which I find is the case here, there is an implied term that the work will be carried out in a reasonably competent manner. In a negligence claim, an applicant must show that the respondent owed them a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
20. Where a party alleges a breach of the standard of care and the subject matter is outside ordinary knowledge, expert evidence is normally required (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. There are 2 exceptions to this rule. First, there is no need for expert evidence when the alleged breach relates to something non-technical. Second, there is no need for expert evidence when the breach is so egregious that it is obviously below the standard of care (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).
21. Mr. Hampel makes lengthy submissions outlining various alleged issues with Cortex's report. For example, Mr. Hampel alleges that Dr. Alden improperly relied on information found in WorkSafeBC documents, did not give enough weight to his self-reporting of workplace issues, and did not properly consider whether he was

discriminated against in his workplace based on his sexual orientation. I find it is outside ordinary knowledge whether Dr. Alden gave improper weight to Mr. Hampel's self-reports, including his alleged discrimination based on his sexual orientation, and the WorkSafeBC documents. I find expert evidence is required for Mr. Hampel to prove these allegations, and there is none before me. So, I find these allegations unproven.

22. I acknowledge that Mr. Hampel is disappointed with Dr. Alden's conclusions. However, by signing Cortex's informed consent form, Mr. Hampel acknowledged that Dr. Alden's assessment would be independent. Dr. Alden says, and I accept, that she also told Mr. Hampel during their meetings that she would be conducting an independent assessment and what that meant. So, I find that Mr. Hampel knew that he was paying Cortex for an independent assessment, and I find that is what he received.
23. The informed consent form also noted Dr. Alden could rely on any materials that were provided to her, or any comments or discussions that occurred during the assessment and incorporate them into the report if she felt they were relevant. So, to the extent Mr. Hampel argues Dr. Alden should not have relied on the WorkSafeBC documents in her assessment, I disagree. I find these documents were clearly relevant, based on Mr. Hampel's stated request for the assessment.
24. Further, I disagree with Mr. Hampel's assertion that Dr. Alden's report did not address what he wanted addressed. Mr. Hampel asked Cortex for an independent assessment about how his work caused or contributed to his condition for his WorkSafeBC claim. I find the evidence shows that Dr. Alden considered all of the evidence and information before her and concluded that Mr. Hampel's workplace manager's communication style was partly responsible for his diagnosed disorders.
25. Lastly, Mr. Hampel also appears to argue that Cortex failed to adequately inform him that he would need collateral witnesses to substantiate his self-reports of workplace bullying and harassment. He says that had Cortex told him this, he would have told it in the beginning that he did not have any supporting witnesses and would not have

spent the money on the assessment and report. However, the evidence shows that on December 28, 2021, AS specifically told Mr. Hampel by email that he may need to think about who might provide collateral information, preferably someone from his workplace, because an independent psychological assessment requires a review of all relevant documents and not just the client's perspective if the report is to carry any weight. Mr. Hampel responded on December 28 and said that he would put a few more names together. Mr. Hampel undisputedly did not provide names of any collateral witnesses other than his therapist and the former co-worker mentioned above that Dr. Alden interviewed.

26. Unfortunately, Dr. Alden's conclusions were different than what Mr. Hampel hoped for. While I accept that the completed assessment report may not be useful for Mr. Hampel's WorkSafeBC claims, I find that Cortex provided him with the independent assessment that he asked and paid for. I find no obvious breach of contract or negligence on Cortex's part in the way it completed the assessment. So, I must dismiss Mr. Hampel's refund claim.
27. 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. Since Mr. Hampel was unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees and his \$11.36 claim for dispute-related registered mail expenses. Cortex did not pay any CRT fees and does not claim any dispute-related expenses, so I award no reimbursement.

ORDER

28. I dismiss Mr. Hampel's claims and this dispute.

Nav Shukla, Tribunal Member