



Civil Resolution Tribunal

Date Issued: June 20, 2024

File: SC-2023-006720

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paterson v. Johnson*, 2024 BCCRT 578

BETWEEN:

CHRISTINE PATERSON

APPLICANT

AND:

LAURENCE D T JOHNSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Christine Paterson, hired the respondent lawyer, Laurence D T Johnson, for a legal matter. The applicant says the respondent overcharged her for his services, and claims a refund of \$3,432.80.
2. The respondent denies owing the applicant any refund.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (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. These are the CRT's formal written reasons.
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 in the interests of justice.
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 court.
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.

Fee Review

8. I acknowledge the respondent's submissions and case law about fee reviews. However, this is not a fee review under the *Legal Profession Act* (LPA). A client's right to challenge a lawyer's account is not limited to an LPA review. Instead, this is a civil claim for debt or damages under a contract for services, which I find falls squarely within the CRT's small claims jurisdiction. I find nothing turns on the fact the applicant chose to start a CRT proceeding instead of asking for an LPA fee review, which is optional.

ISSUE

9. The issue is whether the applicant is entitled to a refund for alleged overbilling and, if so, how much.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant 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 those necessary to explain my decision.
11. The applicant retained the respondent to assist her in a legal matter in November 2021. Neither party submitted a written agreement, so I find the parties’ contract was formed through email messages. On November 30, 2021, the applicant asked for the respondent’s hourly rate, and he replied it was \$300. The parties proceeded on that basis. There is no indication in the evidence or either party’s submissions that any other billing method was considered, or would be used.
12. On April 1, 2023, the respondent billed the applicant a total of \$24,324.63, which included 61.3 hours at \$350 per hour, tax, and disbursements. The applicant reminded the respondent of the \$300 hourly rate they agreed on. As a result, the respondent revised his invoice. The second invoice, also dated April 1, 2023, included 61.3 hours at \$300 per hour, plus a \$3,065 “outcome” fee, plus tax and disbursements, also for a total of \$24,324.63. The respondent undisputedly paid himself this amount out of the applicant’s trust fund monies.
13. The applicant says she did not agree to any “outcome” fee, or any other form of billing other than an hourly rate plus disbursements and tax. The respondent also does not argue the parties had any other billing arrangement. Instead, the respondent argues he was not bound by the “fixed hourly rate” and was entitled to bill a “fair fee”.
14. I note that during the course of this CRT proceeding, the respondent provided a third invoice, dated March 7, 2024. In the March invoice, the respondent billed for 71.52

hours at \$300, removed the “outcome” fee, and charged for tax and disbursements, for a total amount of \$24,324.63, equal to his previous two invoices.

15. I find the parties did not agree on anything other than an hourly basis payment structure, at \$300. The respondent was entitled to charge for his reasonable time worked, which I find is the 61.3 hours set out in his original invoice, not the 71.52 hours he arbitrarily invoiced in March 2024. I also find the respondent was not entitled to any “outcome” fee, as there is no indication the parties contemplated or agreed to this.
16. The applicant does not dispute the 61.3 hours, nor any of the disbursement expenses. Based on the agreed hourly rate, the respondent’s invoice should have been \$20,891.83. This means the applicant overpaid by \$3,432.80, the amount claimed in this dispute. I find the respondent must refund the applicant this amount.
17. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. It is not clear when the respondent paid out the remaining trust fund monies to the applicant. So, on a judgment basis, I find the applicant is entitled to pre-judgment interest starting 30 days from the original invoice’s date, which is May 1, 2023. This equals \$195.31.
18. 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 acknowledge the respondent’s argument that the applicant is not entitled to costs, pursuant to section 72 of the LPA. That section says that when a lawyer’s bill is reviewed, if less than 1/6 of the total bill is subtracted, the person who applied for the review must pay the review costs. However, as noted above, this is not a fee review under the LPA. So, section 72 does not apply. As the applicant was successful, she is entitled to reimbursement of the \$175 she paid in tribunal fees. She did not claim any dispute-related expenses.

ORDERS

19. Within 21 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,803.11, broken down as follows:
 - a. \$3,432.80 in debt,
 - b. \$195.31 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$175 in tribunal fees.
20. The applicant is also entitled to post-judgment interest, as applicable.
21. This is a validated decision and order. 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.

Andrea Ritchie, Vice Chair