



# Civil Resolution Tribunal

Date Issued: April 21, 2020

File: VI-2019-009338

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Mu v. ICBC*, 2020 BCCRT 432

BETWEEN:

SUJUAN MU

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (tribunal) about whether the subject tribunal proceedings should be paused indefinitely.

2. The applicant, Sujuan Mu, was involved in a motor vehicle accident on April 8, 2019, and filed a Dispute Notice with the tribunal to preserve the limitation period for her entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident benefits under Part 7.
3. In a previous preliminary decision, *Mu v. ICBC*, 2020 BCCRT 267 (previous decision), I considered generally whether an applicant can file a “placeholder” or “bare bones” Dispute Notice to preserve a limitation period. In my previous decision, I determined the applicant was entitled to file whatever form of Dispute Notice she saw fit, subject to the tribunal’s limitation period and jurisdiction. I also found that once a Dispute Notice is filed, the tribunal’s dispute resolution process is started and does not stop unless so ordered by the tribunal, on request by a party, and pursuant to tribunal rule 1.15.
4. Ms. Mu now seeks to have the tribunal process paused indefinitely, consistent with using her Dispute Notice as a “placeholder” until some potential future claim for accident benefits arises. For the following reasons, I deny Ms. Mu’s request to pause the tribunal process.
5. Ms. Mu is represented by Martin Bauer, legal counsel. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over motor vehicle injury disputes, or “accident claims” brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the tribunal jurisdiction over the determination of entitlement to accident benefits. Section 2 of the CRTA states that the tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.

7. Section 39 of the CRTA says that the tribunal 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 tribunal'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.
8. Section 42 of the CRTA says that the tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under section 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the tribunal's objects in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

## **ISSUE**

10. The issue in this preliminary decision is whether the tribunal process should be paused indefinitely.

## **EVIDENCE AND ANALYSIS**

11. I set out the factual background in my previous decision. I will not repeat it here.
12. In support of her application to pause the tribunal proceedings, Ms. Mu re-submitted her arguments from the previous decision. In addition, Ms. Mu suggests that I am biased and should recuse myself, says the tribunal's process has been cumbersome, and generally says she is not ready to proceed to a hearing, but that

she is entitled to Part 7 benefits arising from the April 8, 2019 accident for the rest of her life.

13. I will deal first with Ms. Mu's request to pause the tribunal process.

***Should the tribunal process be paused indefinitely?***

14. As noted above, despite filing a Dispute Notice, Ms. Mu admits she currently is not ready to proceed through the dispute process. Ms. Mu says she is entitled to Part 7 benefits as a result of the April 8, 2019 accident for the rest of her life, and so although she is not currently requesting any specific accident benefits, she says she should be entitled to file her pro forma Dispute Notice, preserving the limitation period for accident benefits indefinitely, and that she should not have to continue the dispute resolution process at this time.

15. Also as noted above, once a Dispute Notice is filed, the dispute resolution process is started, and is not paused unless so ordered by the tribunal, on request by a party, and pursuant to tribunal rule 1.15. A request to pause a tribunal proceeding is not granted as of right.

16. Tribunal rule 1.15(3) says that in considering a request to pause the tribunal process, the tribunal may consider:

- a. The reason the party is requesting that the tribunal process be paused,
- b. Whether all parties consent to pausing the tribunal process,
- c. Any prejudice to the other parties if the tribunal process is paused,
- d. Whether there have been previous delays, and the reason for those delays,
- e. Whether the tribunal's mandate supports a pause,
- f. Any other legislation that may apply to the dispute or the request to pause,

- g. Whether it is in the interests of justice and fairness to pause the tribunal process, and
  - h. Any other factors the tribunal considers appropriate.
17. Here, Ms. Mu's reason for requesting the pause is because she is currently not seeking any accident benefits, but may wish to do so in the future. ICBC opposes the request. I am unaware of any previous delays.
18. In considering whether there is any other legislation that applies to the dispute, I turn to section 103 of the IVR. As stated in my previous decision, section 103 sets out the process for obtaining accident benefits from ICBC.
19. Section 103(3) says an insured may give ICBC written notice of their intention to commence an action for accident benefits if their claim for benefits has been denied by ICBC, or if ICBC has not made a payment within the time limits prescribed in section 101. Here, it is admitted Ms. Mu has not given ICBC written notice under section 103(3), because she has not been denied any benefits, nor has ICBC failed to make payment for any benefits within the prescribed time limits.
20. Further in the IVR, section 103(1)(b)(i) says that, if written notice was given to ICBC under section 103(3), an insured may commence an action for accident benefits within 3 months of the date of ICBC's response to the written notice, within 2 years of the date of the accident, or within 2 years after the date the last benefit was paid, whichever is later.
21. Section 103(1)(b)(iii) says that, if written notice was **not** given to ICBC under section 103(3), an insured may commence an action for accident benefits within 2 years of the date of the accident or within 2 years after the date the last benefit was paid, whichever is later.
22. Although Ms. Mu submits she is entitled to Part 7 benefits for "the rest of her life", I find the IVR does not provide such a blanket entitlement. Rather, section 103 of the IVR sets out limitation periods for entitlement to accident benefits to give certainty

about potential future claims relating to accidents on and after April 1, 2019. That is, an insured is only entitled to claim accident benefits within 2 years of the date of the accident, or within 2 years of the date the last benefit was paid, whichever is later. Further, pursuant to section 103(1)(b)(ii), if written notice is given to ICBC and ICBC **does not** respond, the insured's right to commence an action for accident benefits is extended indefinitely.

23. I find Ms. Mu's argument that she is entitled to file a Dispute Notice to preserve her limitation period indefinitely for potential future accident benefit claims inconsistent with section 103 of the IVR, which was enacted April 1, 2019. Although I acknowledge Ms. Mu's submission that this is "how it was done" in the past at the British Columbia Supreme Court, with respect, that was before the current legislation was in effect, and before the tribunal was granted exclusive jurisdiction over accident benefits, pursuant to section 133(1)(a) of the CRTA. I find the amended section 103 provides a new procedure for preserving an insured's right to accident benefits that does not require a pro forma placeholder Dispute Notice be filed.
24. I note Ms. Mu also argues that she may have multiple requests for accident benefits as a result of the April 8, 2019 accident, occurring at different times. Ms. Mu says that is why one placeholder Dispute Notice is required to preserve the limitation period. Again, the limitation periods in section 103 do not prevent multiple requests for accident benefits, and Ms. Mu is entitled to file as many accident benefits claims with the tribunal as necessary, she is not limited to one. Given the section 103 procedure, I find there is no prejudice to Ms. Mu in refusing to pause the current dispute, whereas there is prejudice to ICBC as there would be an outstanding claim against it with no certainty as to its resolution.
25. Additionally, I find allowing a dispute to linger dormant in the tribunal's dispute resolution process indefinitely is inconsistent with the tribunal's mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. Further, I find the accident benefits issue is plainly within the tribunal's

exclusive jurisdiction and there are no factors which would prevent the tribunal from fairly hearing the dispute, including this preliminary issue. Therefore, I find it is not in the interests of justice or fairness to pause the dispute.

26. In these circumstances, I find that it is unreasonable to allow Ms. Mu's pause request. The Dispute Notice was properly filed within the limitation period and its subject-matter is within the tribunal's jurisdiction. The dispute resolution process will continue. Nothing in this decision prevents Ms. Mu from making a fresh request to pause the tribunal process should her circumstances change.

27. For these reasons, Ms. Mu's request to pause the tribunal process is denied.

### ***Reasonable Apprehension of Bias***

28. Ms. Mu submits I should recuse myself from this application due to a reasonable apprehension of bias.

29. Ms. Mu argues that because tribunal members are appointed by the provincial cabinet and that one of the cabinet ministers, the Attorney General of British Columbia (AG), is also the minister responsible for ICBC, that tribunal members cannot be impartial. Ms. Mu does not suggest I am personally biased, but I infer she is suggesting there is a reasonable apprehension of institutional bias.

30. Section 68 of the CRTA sets out the tribunal's appointment process. Vice chairs and tribunal members are appointed after a rigorous, merit-based competition conducted by the tribunal. Successful candidates are recommended for appointment by the tribunal chair. The provincial cabinet, made up of 23 ministers, including the AG, considers the chair's recommendations. The Lieutenant Governor in Council acts on the advice of cabinet, and makes appointments. Although the Lieutenant Governor in Council is not bound by the chair's recommendations, to date all recommendations from the tribunal chair have been accepted by cabinet. The AG does not have the sole discretion to make or refuse appointments under the CRTA.

31. Once appointed, it is up to the individual vice chair or tribunal member to discharge their statutory duties. Section 83 of the CRTA says that tribunal members must perform their duties "faithfully, honestly and impartially".
32. The test for determining a reasonable apprehension of institutional bias is whether a reasonable and informed person with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the adjudicator's conduct gives rise to a reasonable apprehension of bias in a substantial number of cases (see: *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC) and 2747-3174 *Québec Inc., v. Quebec (Régie des permis d'alcool*, [1996] 3 SCR 919). Absent constitutional constraints, the degree of independence required of a tribunal is determined by its enabling statute (see: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52). Further, it is generally inferred that the legislature intended the tribunal's process to conform with principles of natural justice (see: *Ocean Port*). Simply put, without more, a tribunal acting within its statutorily mandated authority and structure, does not amount to institutional bias.
33. To the extent Ms. Mu's argument is that the tribunal's appointment process is unconstitutional, under section 113 of the CRTA, the tribunal has no jurisdiction over constitutional questions.
34. I find Ms. Mu has not established a reasonable apprehension of bias. Further, I find that recusing myself on the basis that the statutory appointment process gives rise to a reasonable apprehension of bias would frustrate the tribunal's ability to discharge its statutory mandate, as every tribunal member would effectively be excluded from deciding cases within the tribunal's exclusive jurisdiction.

## **The Tribunal's Mandate**

35. Ms. Mu further submits that the tribunal process is "grossly inefficient" and fails to provide dispute resolution services consistent with its mandate. She submits the process should mimic that of the British Columbia Supreme Court, where she



previously would have been able to file a “placeholder” notice of civil claim. This issue was addressed in my previous decision, which I will not repeat here, except to say tribunals are masters of their own procedure, subject to the rules of fairness and natural justice, and absent specific rules laid down by statute or regulations. The tribunal has exclusive jurisdiction over accident benefit disputes, and it is unclear how this argument is relevant to the issue of whether Ms. Mu’s dispute should be paused, as the tribunal would still have jurisdiction to resolve the dispute once it is “unpaused”. For this reason, I do not accept Ms. Mu’s submissions in this regard.

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Andrea Ritchie, Vice Chair