



Civil Resolution Tribunal

Date Issued: January 23, 2023

File: VI-2022-000053

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Ali v. Flett*, 2023 BCCRT 57

BETWEEN:

SHARAFUDIN ALI

APPLICANT

AND:

NELSON FLETT and ROBERT EVOY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT), but is not a decision on the merits of the claim. The issue is whether the applicant's claims should be dismissed as out of time. CRT staff referred this dispute to me for a decision on this issue.

2. The applicant, Sharafudin Ali, was involved in a motor vehicle accident on August 28, 2019 with one or both of the respondents, Nelson Flett and Robert Evoy. The respondents' specific roles in the accident are unknown to me.
3. The applicant seeks a liability determination and \$50,000 in damages for "reduced work hours" due to alleged injuries from the accident. The respondents say the applicant's claims are out of time under the *Limitation Act*.
4. The applicant is represented by Andrew Rafuse, legal counsel. The respondents are represented by an authorized employee of their insurer, Insurance Corporation of British Columbia (ICBC).
5. For the reasons that follow, I find the applicant's claim is out of time and on that basis I dismiss their claims and this dispute.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims" brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages in an accident claim, up to \$50,000.
7. At the time the applicant filed their CRT dispute, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA) then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA.
8. On May 12, 2022, the BCCA overturned the BCSC's decision, and on December 22, 2022, the Supreme Court of Canada (SCC) declined to hear an appeal of the BCCA's decision. This means that the CRT retains jurisdiction to resolve claims under section

133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b).

9. 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.

ISSUE

10. The issue in this decision is whether the applicant's claims are out of time under the *Limitation Act*.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities (meaning "more likely than not"). In making this decision I reviewed the Dispute Notice, the respondents' Dispute Responses, and the parties' submissions as documented in a Preliminary Issue Tribunal Decision Plan. I note the applicant nor their counsel provided any submissions on this preliminary issue, despite being given the opportunity to do so.
12. The *Limitation Act* applies to disputes at the CRT. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after the day on which the claim is discovered.
13. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day the person knew or reasonably ought to have known that the loss occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

14. Here, it is undisputed the applicant discovered, or ought to have discovered, their claims on August 28, 2019, the date of the accident. As noted, the applicant filed their application for dispute resolution on January 4, 2022, more than 2 years after they discovered their claims. So, I find the applicant's claims are statute-barred by the *Limitation Act*. I dismiss the applicant's claims and this dispute on that basis.
15. 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. As the applicant was unsuccessful, I dismiss their claim for reimbursement of CRT expenses. The respondents each paid \$25 in tribunal fees which I find the applicant must reimburse.

ORDERS

16. Within 30 days of the date of this decision, I order the applicant to pay the respondents \$25 each for reimbursement of tribunal fees.
17. The respondents are also entitled to post-judgment interest, as applicable.
18. I dismiss the applicant's claims, and this dispute.
19. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia, if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Andrea Ritchie, Vice Chair