



# Civil Resolution Tribunal

Date Issued: May 24, 2019

File: SC-2018-009437

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *THUNDERBOLT v. INSURANCE CORPORATION OF  
BRITISH COLUMBIA*, 2019 BCCRT 635

B E T W E E N :

MIRACLE ANGEL THUNDERBOLT

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

### INTRODUCTION

1. The applicant, MIRACLE ANGEL THUNDERBOLT, took multiple knowledge tests and a road test with the respondent, INSURANCE CORPORATION OF BRITISH COLUMBIA (ICBC). The applicant says ICBC made arbitrary decisions to fail him

on some of the tests, for which he claims \$1,000 in compensation, and he wants ICBC to stop making such arbitrary decisions. He also says ICBC keeps secret “backlists” of road test appointments that are not available to the public, and he wants ICBC to reimburse him \$65 in test fees. The applicant also wants ICBC to pay him \$200 in moral or civil damages.

2. ICBC says the Civil Resolution Tribunal (tribunal) does not have jurisdiction to decide this dispute because the applicant already brought his claims to the BC Provincial Court where they were dismissed. ICBC says it provided valid reasons for the applicant’s failure of his knowledge test and road test and says it does not have a “backlist” of appointments for road tests. It says it has not done anything wrong and therefore does not owe the applicant anything.
3. The applicant is self-represented and ICBC is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. 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.
5. The tribunal 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 “he said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the

documentary evidence and submissions before me. 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. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.
7. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. The applicant says he has health issues and requests accommodation from the tribunal for a telephone hearing. He submitted a letter dated January 17, 2019 from a care provider stating that his health issues make it difficult for him to attend legal proceedings in person and allowing him to attend a hearing by teleconference would be a significant accommodation for his health diagnosis. I note this letter does not address the applicant's inability to participate by written submissions. Based on the description of the applicant's health issues in this letter, there is no indication that they prevented him from participating fully in this dispute by written submissions. The applicant's submission does not suggest he has difficulty reading or writing. Therefore, I find I can fairly decide this dispute based on written submissions.

## **ISSUES**

9. The issues in this dispute are:
  - a. Should the tribunal refuse to resolve this dispute?

- b. If not, is ICBC required to reimburse the applicant's \$65 test fees?
- c. Is ICBC required to pay the applicant \$200 for moral or civil damages?
- d. Should the tribunal order ICBC to stop making arbitrary decisions on its road tests and knowledge tests, and if so is there any basis on which ICBC is required to pay the applicant \$1,000?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
12. I note the applicant submitted a certificate of name change dated April 18, 2018. Prior to that date the applicant's name was MIGUEL ANGEL MONTANO GUTIERREZ. That is the name ICBC says it has on file for the applicant.
13. On January 18, 2016 the applicant paid ICBC \$15 to take a knowledge test at one of ICBC's offices. The applicant did not inform ICBC of any health issues or special requirements prior to taking the test. The applicant took the test on a computer and he learned immediately that he did not pass. He then informed ICBC that he suffered from a health condition and asked to retake the test for free in a quiet room. ICBC told the applicant he could not retake the test immediately but that he could return the next morning to do so. ICBC says the applicant did not return the next morning, and despite multiple attempts to contact the applicant by phone and letter to arrange for a time to accommodate the applicant's special request, the applicant did not respond or return to take the test. The applicant does not dispute this.

14. On September 13, 2017 the applicant re-took the knowledge test and ICBC waived the test fee. ICBC says they decided to waive the fee as a customer service gesture, not because the applicant was entitled to the fee waiver. The applicant passed the test but refused to surrender his Venezuelan license, which ICBC required to comply with the *Motor Vehicle Act*.
15. ICBC says they arranged for the applicant to re-take the knowledge test on November 20, 2018 at its Richmond office. It is unclear from the parties' submissions why the applicant was required to retake the test when he passed it on September 1, 2017, however the applicant does not suggest that he was not required to retake the test. ICBC arranged for the applicant to retake the test on November 20, 2018 outside of regular office hours, in a quiet room where staff were available to assist him. ICBC says the applicant did not attend this appointment but he asked ICBC to waive the fees for this missed test, which ICBC declined to do. The applicant does not dispute this.
16. On December 18, 2018 ICBC says the applicant took the knowledge test in a quiet room and passed. ICBC scheduled his road test for January 16, 2019, however the applicant went on standby and managed to schedule a road test for later that day. The applicant failed the road test.

***Should the tribunal refuse to resolve this dispute?***

17. ICBC says the tribunal does not have jurisdiction to resolve this dispute because the applicant filed the same claim in BC Provincial Court on January 22, 2016 which has since been dismissed. ICBC is claiming this dispute is *res judicata*, meaning a court has already considered the same issue or cause of action, and thus the applicant cannot bring the same issue or cause of action to the tribunal for a fresh decision.
18. The owner says his dispute before the tribunal is different than his claims in the Provincial Court action. For the following reasons, I disagree with respect to the 2016 knowledge test claims.

19. On January 22, 2016 the applicant filed a claim in the BC Provincial Court for \$10,000 in civil and moral damages for ICBC's alleged failure to accommodate his disability when he failed a knowledge test on January 18, 2016, and \$15 for reimbursement of his test fee. This claim was dismissed on May 2, 2016 when he failed to attend a settlement conference.
20. A litigant cannot pursue a matter that was or should have been the subject of a previous proceeding. In law this is called cause of action estoppel. There are 4 requirements to establish cause of action estoppel. First, there must be a final decision of a court in the prior action. Second, the parties to the subsequent litigation must be the same as the parties to the prior action. Third, the cause of action in the subsequent litigation must not be separate and distinct from the prior action. Finally, the basis for the cause of action must have been argued in the prior action or could have been argued if the parties exercised reasonable diligence. (see *Tuokko v. Skulstad*, 2016 BCSC 2200 (CanLII), at paragraph 17).
21. It is undisputed that the first 2 requirements are met in this case. The Provincial Court dismissed the claim on May 2, 2016, and the parties were the same as in this dispute. A dismissal is a final decision. The question is whether the third and fourth criteria are met. For the following reasons, I find that these criteria are met with respect to the January 18, 2016 knowledge test.
22. With respect to the third criteria, in *Tuokko* the court said there is no separate cause of action where a party argues different legal bases around the same factual situation. In the Provincial Court action, the applicant claimed civil and moral damages for ICBC's failure to accommodate his disability when he failed the January 18, 2016 knowledge test. In this dispute the applicant claims reimbursement of test fees, unspecified moral and civil damages, and compensation for ICBC making arbitrary decisions on its road and knowledge tests. His claims in this dispute relate to the January 18, 2016 knowledge test as well as subsequent knowledge tests and a road test. To the extent the applicant's claims in this dispute relate to the January 18, 2016 knowledge test, I find the applicant is

arguing different legal bases around the same factual situation. Therefore, I find the third criteria is met with respect to the January 18, 2016 knowledge test.

23. With respect to the fourth criteria, a party cannot raise additional arguments in the second proceeding which they could have raised earlier with due diligence. I find the applicant's claims in this dispute for reimbursement of fees, moral and civil damages, and compensation for ICBC's arbitrary decisions, to the extent they relate to the January 18, 2016 knowledge test, are all issues the applicant could have raised in the Province Court action with due diligence. Therefore, I find the fourth criteria is met with respect to the January 18, 2016 knowledge test.
24. In summary, I find all 4 criteria for cause of action estoppel are met in this case, with respect to the knowledge test.
25. Section 11 (1) (ii) of the Act says the tribunal may refuse to resolve a claim or dispute within its jurisdiction if it considers that it has been resolved through a legally binding process. Based on my finding above, in accordance with section 11 (1) (ii) of the Act I find I must refuse to resolve the applicant's claims to the extent they relate to the January 18, 2016 knowledge test.
26. As part of its *res judicata* submissions ICBC also says the applicant filed a complaint with the Human Rights Tribunal (HRT), however the HRT has jurisdiction over breaches of the *Human Rights Code*, and the tribunal does not have jurisdiction to decide such claims. Therefore, I find the fact that the applicant started a complaint with the HRT based on similar facts to those in this dispute does not prevent him from also bringing a claim with the tribunal for matters within the tribunal's jurisdiction. The applicant's claims are framed in debt, and the tribunal has jurisdiction over debt claims.
27. ICBC also says the applicant filed submission with its Fairness Commissioner, suggesting that this dispute has already been decided through that body. However, the letter in evidence from the Fairness Commissioner indicates his role is to ensure ICBC follows the principles of procedural fairness in dealing with the applicant.

There is no evidence to indicate the applicant's submissions to the Fairness Commissioner preclude him from bringing his debt claim to the tribunal. On the contrary, the Fairness Commissioner's letter specifically informs the applicant of his right to make a claim with the courts.

28. While I refuse to resolve the applicant's claims to the extent they relate to the January 18, 2016 knowledge test, I find I must resolve the applicant's claims to the extent they relate to other knowledge tests and the road test the applicant took in 2017 and 2018.

***Is ICBC required to reimburse the applicant's \$65 test fees?***

29. The applicant says that at ICBC's Richmond office it keeps a separate and secret "backlist" of road test appointments that are not available through ICBC's customer service, online portal, or phone scheduling systems. The applicant says the road test appointment ICBC scheduled for him on January 16, 2019 was from this secret "backlist" and it was not recorded with the general lists maintained by ICBC's customer service. The applicant says for this reason ICBC should reimburse his test fees.
30. ICBC says there is no "backlist" at the Richmond office or any other of its offices. They say their supervisors and managers have discretion to fit a customer into a schedule for customer service reasons in exceptional circumstances, but that these extra appointments are in addition to those already available through its online booking system.
31. The applicant says ICBC's discretion to accommodate customers in exceptional circumstances amounts to corruption. However, I find there is no basis for this claim. The applicant has not submitted proof of the dates or amounts of the test fees he says he paid to ICBC or provided any valid reason why ICBC should waive his test fees.



32. It is the applicant's responsibility to prove his claim and I find he has not done so. I dismiss this claim.

***Is ICBC required to pay the applicant \$200 for moral or civil damages?***

33. It is unclear from the applicant's submissions what the basis is for this claim. Both parties made submissions about whether the applicant was required to surrender his Venezuelan license, however I find the evidence does not establish any basis on which ICBC is required to compensate the applicant with respect to this issue.

34. The applicant has not articulated what constitutes his alleged moral or civil damages or provided evidence to support the amount of the claim. Again, I find the applicant has failed to prove his claim, and I dismiss it.

***Should the tribunal order ICBC to stop making arbitrary decisions on its road tests and knowledge tests, and if so is there any basis on which ICBC is required to pay the applicant \$1,000?***

35. The applicant says ICBC included lies and inaccurate statements on both the knowledge test and the road test, and that ICBC made arbitrary decisions about the applicant's results on both tests. He claims \$1,000 to compensate him for these allegedly arbitrary decisions.

36. The applicant provided no information about the content of the knowledge test or what exactly on that test he says was inaccurate. He has provided no evidence to indicate he failed any of the knowledge tests for arbitrary reasons.

37. ICBC submitted the road test results which show the applicant failed for insufficient skills, a dangerous action, and a violation. ICBC says, and the road test results confirm, that the driver examiner was required to take control of the car while the applicant was completing a left turn because he moved the car into an unsafe position. ICBC says there was also a violation for speeding at 40 kilometers per

hour in a school zone where the speed limit was 30 kilometers per hour, however I find this is not explicitly clear from reading the road test results.

38. The applicant claims that his driver examiner during the road test misconstrued what really happened during the test, and that he was prohibited from recording the test through audio or video. He says there was no dangerous action and that when he was turning left into the left lane the oncoming vehicle turned right into the right lane, and there was no defensive action taken. He also says he drove his car at 30 kilometers per hour through the school zone. The applicant submitted evidence to show he maintains his vehicle in a safe condition, however I find this is unhelpful in determining his driving skills during the road test. ICBC denies these allegations and says the road test results in evidence support their position.
39. While the applicant may disagree with the road test results, they are the best evidence of what occurred during the test. I find they are reasonable, and the applicant has not suggested any compelling reason they would be inaccurate. I find the applicant has not established the road test results are inaccurate.
40. The applicant claims \$1,000 in compensation but he gave no explanation of how he calculated this amount. On balance, I find the applicant has not established that ICBC arbitrarily failed him on his knowledge tests or road test or otherwise made arbitrary decisions, and therefore I find the applicant is not entitled to compensation from ICBC.
41. Given my findings above, I find it is unnecessary for me to address the applicant's request for an order that ICBC stop making arbitrary decisions on its road and knowledge tests. However, I note that in any event the requested remedy amounts to a request for injunctive relief, and the tribunal does not have the jurisdiction to grant injunctive relief. I dismiss this claim.
42. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful he is not entitled to reimbursement of his dispute-related expenses. The tribunal granted the applicant a fee waiver, so he did not pay any tribunal fees.

He claims \$300 in legal fees however the tribunal generally does not order the reimbursement of legal fees except in extraordinary circumstances, and I find there is nothing extraordinary about this case. I dismiss this claim.

## **ORDERS**

43. In accordance with section 11 (1) (ii) of the Act, I refuse to resolve the applicant's claims to the extent they relate to the January 16, 2018 knowledge test.

44. I dismiss the remainder of the applicant's claims.

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Sarah Orr, Tribunal Member