



# Civil Resolution Tribunal

Date Issued: September 17, 2019

File: SC-2019-003431

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Olfrey v. ICBC*, 2019 BCCRT 1094

BETWEEN:

FREDRICK OLFREY

**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 dispute is about payment for a stolen vehicle. The applicant, Fredrick Olfrey, says his vehicle was stolen and that the respondent insurer, Insurance Corporation of British Columbia (ICBC), refuses to compensate him for the value of his vehicle.

The applicant also claims for reimbursement of insurance payments that were taken out of his bank account after his vehicle was written off. In total, the applicant seeks \$5,000 in compensation.

2. ICBC says the applicant made a wilfully false statement and therefore denied his claim for compensation further to section 75 of the *Insurance (Vehicle) Act*.
3. The applicant is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 make one or more of the following orders, where permitted by section 118 of the CRTA:
  - a. Order a party to do or stop doing something;
  - b. Order a party to pay money;
  - c. Order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the applicant entitled to compensation for the value of his vehicle, and if so, what amount is appropriate?
  - b. Is the applicant entitled to reimbursement for insurance payments incorrectly withdrawn from his bank account?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that on September 16, 2018, the applicant noticed his 2003 Ford Explorer Sport Trac truck missing from where it was parked outside of his home. He called the police who subsequently found the vehicle burned out. The applicant filed a claim with his insurer, ICBC. ICBC determined the vehicle was a total loss and upon their investigation determined the applicant was not entitled to compensation.
11. The parties agree that, at the time of the loss, the applicant had valid theft insurance on the vehicle.

***Is the applicant entitled to compensation for the value of his vehicle, and if so, what amount is appropriate?***

12. As noted above, the applicant seeks compensation for the value of his stolen vehicle. Initially, the applicant also requested \$500 in reimbursement for parts he had purchased and installed in the vehicle before it was stolen. However, in his submissions, the applicant decided not to pursue that claim, so I have not dealt with it in this decision.
13. On September 28, 2018, the applicant provided a statement to ICBC. The statement went over the details of the loss and the vehicle's condition prior to it being stolen. The applicant is noted as saying "mechanically the vehicle was very good", "everything was working awesome except for one light on the dashboard that was out" and "everything else worked... it just needed an oil change".
14. After the burned vehicle was recovered, an ICBC employee, MH, performed a mechanical inspection and prepared a vehicle inspection report. In his October 30, 2018 report, MH provided the opinion that the vehicle was "exhibiting obvious poor drivability symptoms such as pre-ignition, misfiring, overheating, and transmission issues such as slipping and noisy erratic gear shifting" before the theft and fire incident. He further stated the engine failures would have been evident to the applicant through the vehicle's dash display, "followed by overheating and possible seizing of the engine".
15. Relying on MH's opinion, ICBC denied the applicant's compensation claim, further to section 75 of the *Insurance (Vehicle) Act*. Section 75 sets out, among other things, that if an insured makes a wilfully false statement with respect to a claim, or falsely describes the vehicle for which an application is made, the insured forfeits their right to insurance money.
16. ICBC says that the applicant wilfully provided false information about the vehicle's condition before it was stolen by stating it was in good working order, when MH determined that there were significant and obvious pre-existing engine issues. In

contrast, the applicant says he did not experience any engine issues with the vehicle and questions whether an inspection performed after a total loss resulting from fire damage can be relied upon. The applicant says he spoke with “several qualified” mechanics who advised an inspection of a vehicle’s engine performance or reliability after extensive fire damage is “near impossible”. However, the applicant did not provide a statement or expert report from any mechanic.

17. The applicant did, however, produce statements from four friends or acquaintances who each advised that they had been in the vehicle before it was damaged and noted it was in good condition and there were no issues with the truck’s performance. None of the statements are dated and none provide the dates in which the authors rode in the applicant’s vehicle.
18. The technical requirements for expert evidence are not met because MH’s qualifications are not in evidence before me. However, it is clear it is his job to assess the condition of post-accident vehicles and I accept that he is competent in that role. After a detailed inspection of the applicant’s vehicle, MH’s report is clear in its conclusion that the vehicle had significant, noticeable problems before the fire.
19. On balance, I place more weight on MH’s report than on the observations of the applicant’s friends that the vehicle appeared to be in good condition when they only occasionally rode in it. The friends were not clearly disinterested given their relationship with the applicant. Additionally, there is no mechanical evidence to contradict MH’s report, despite the applicant saying he spoke to “several” qualified mechanics about the report.
20. Given the above, I find the vehicle was experiencing significant mechanical problems before the theft which were evident to the applicant. I find that he failed to disclose those issues to ICBC and, as a result, ICBC denied his claim under section 75 of the *Insurance (Vehicle) Act*. I find ICBC did not act unreasonably in doing so. Put another way, I find the applicant has not met his burden of proving he is entitled to compensation for the vehicle’s value, because I find he failed to adequately disclose the vehicle’s condition. I dismiss his claim in this regard.

21. Given my conclusions above, I do not need to provide a detailed assessment of the applicant's claimed damages for the value of the vehicle.

***Is the applicant entitled to reimbursement for insurance payments incorrectly withdrawn from his bank account?***

22. The applicant says that after he reported his vehicle stolen, ICBC continued to withdraw insurance payments from his bank account. He claims \$110 for reimbursement of the extra payment(s). It is unclear to me whether it was one or more payments. ICBC did not dispute it continued to withdraw payments or the amount. I order ICBC to reimburse the applicant \$110 for insurance overpayment. The applicant is entitled to pre-judgment interest on that amount. As the parties did not provide evidence as to when the overpayment occurred, on a judgment basis, I award pre-judgment interest under the COIA from November 16, 2018, two months after the loss, which totals \$1.73.

23. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was mostly unsuccessful, I find he is not entitled to reimbursement of his tribunal fees or dispute-related expenses. Even if the applicant had been successful, I would not have ordered reimbursement of his \$50 dispute-related expense (later lowered to \$25). The amount was allegedly paid to have an ICBC Proof of Loss form notarized. I find this expense was not related to this dispute, but rather formed part of the initial claims process with ICBC. Additionally, the applicant did not provide any receipt for the amount paid.

**ORDERS**

24. Within 14 days of the date of this decision, I order ICBC to pay the applicant a total of \$111.73, broken down as follows:

- a. \$110 for insurance overpayment, and

b. \$1.73 in pre-judgment interest under the COIA

25. The applicant is also entitled to post-judgment interest under the COIA.

26. The applicant's remaining claims are dismissed.

27. Under section 48 of the CRTA, the tribunal will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

28. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Andrea Ritchie, Vice Chair