



# Civil Resolution Tribunal

Date Issued: March 3, 2020

File: SC-2019-006545

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leese v. ICBC*, 2020 BCCRT 242

**B E T W E E N :**

MARILYN LEESE

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA and Gordon  
Lum

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal), but it is not a decision on the merits of the claim. The issue is whether the applicant, Marilyn

Leese, is out of time to bring her claims against the respondents, the Insurance Corporation of British Columbia (ICBC) and Gordon Lum.

2. The dispute arose from a May 11, 2017 motor vehicle accident. Mr. Lum was one of the 3 drivers involved in the accident and ICBC was both Mr. Lum and the applicant's insurer. ICBC internally concluded that the applicant was 100% liable for the accident. The applicant argues that Mr. Lum was 100% responsible for the accident, as she says he struck her vehicle with his vehicle. The applicant claims \$5,000 in damages and an order that ICBC reverse its liability finding.
3. The applicant is self-represented. The respondents are represented by an ICBC employee.
4. For the reasons that follow, I find the applicant's claims are out of time and I dismiss the dispute.

## **JURISDICTION AND PROCEDURE**

5. These are the tribunal's formal written reasons. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
9. As a preliminary matter, the applicant had asked the tribunal for an extension to consult with a lawyer before proceeding with this summary hearing. I will discuss this issue first.

### ***Extension Request***

10. On January 2, 2020, the applicant asked for an extension of 10 months to 1 year to make submissions about the limitation issue. On January 15, 2020, a tribunal member denied an extension of this length but allowed a shorter extension. In particular, the tribunal member directed the respondents to make submissions about the limitation period first since it is a defence raised in their Dispute Response. The tribunal directed that the respondents submit their submissions by January 23, 2020 and the applicant submit her response by February 20, 2020.
11. ICBC provided its submissions on behalf of both respondents by its January 23, 2020 deadline. ICBC's submissions were both emailed and sent by mail to the applicant on January 27, 2020. The applicant did not respond by the February 20, 2020 due date. The tribunal attempted to contact the applicant by phone on February 20 and 24, 2020 and left a message for her to call back. On February 26, 2020, the tribunal left another message explaining that it intended to forward the dispute to the tribunal member without her participation. On February 27, 2020, the applicant called the tribunal to request extra time to consult with a lawyer. The tribunal offered the applicant an opportunity to provide a response by phone. The applicant declined.
12. The limitation defence was raised in the respondents' Dispute Responses and briefly set out in the tribunal member's January 15, 2020 decision, so I find the applicant had notice of the defence. I find the applicant had several weeks to obtain legal advice and respond to the respondents' short January 23, 2020 submission

about the limitation period. I find the tribunal provided the applicant with a reasonable opportunity to make submissions. Considering the tribunal's mandate of speedy and proportionate dispute resolution, I have proceeded with this summary decision without submissions from the applicant.

## **ISSUE**

13. The issue is whether the applicant is out of time to bring this claim against the respondents.

## **EVIDENCE AND ANALYSIS**

14. The tribunal case manager invited the parties to make submissions on the issue of whether the applicant's claim is out of time.
15. The *Limitation Act* applies to disputes before the tribunal. A limitation period is a period of time within which a person may bring a claim. If that time period expires, the right to bring the claim ends, even if the claim would have been successful.
16. In British Columbia, the current *Limitation Act* became law on June 1, 2013. It provides, with some exceptions, that a claim be started within two years of when it was discovered.
17. A limitation period begins on the first day that a person discovers a claim, meaning the first day on which the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed 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 remedy the loss.
18. I find that the limitation period for this dispute is two years, under section 6(1) of the *Limitation Act*.

19. The applicant filed for dispute resolution on August 15, 2019, which stopped the limitation period running. To be brought on time, I find the latest date the applicant could have discovered her claims was August 15, 2017.
20. ICBC says the applicant's claims are out of time because the accident occurred on May 11, 2017 and this is more than 2 years before she filed for dispute resolution.
21. Again, as noted above the applicant provided no submissions or evidence on this limitation issue.
22. An adverse inference can be drawn where a party fails without reasonable explanation to produce relevant evidence assumed to help that party. I find the applicant's evidence on what she knew about the loss and her claim is directly relevant to the issue of discoverability. I make an adverse inference against the applicant that she must have reasonably known of her claim, if not by the accident date, then at least by August 14, 2017, which is 3 months after the accident date. There is no evidence to suggest that the applicant could not have reasonably known that her vehicle was damaged at the time of the May 11, 2017 accident or within days after the accident. There is also no evidence to suggest that she could not have reasonably known the identity of the other driver, Mr. Lum, within days of the accident. Further, there is no evidence to suggest the applicant did not know damage was caused by Mr. Lum or that a tribunal or court proceeding would be appropriate.
23. Since the applicant did not submit the dispute application until August 15, 2019, 2 years and 3 months after the May 11, 2017 accident, I find this dispute is out of time. I find the applicant's claims are statute barred by the *Limitation Act*. I dismiss this dispute on that basis.
24. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful, and the respondents

have not incurred any tribunal fees, so I decline to make such an order. The respondents did not claim any dispute-related expenses.

## **ORDER**

25. I dismiss the applicant's claims and this dispute.

---

Trisha Apland, Tribunal Member