



# Civil Resolution Tribunal

Date Issued: March 26, 2020

File: SC-2019-007324

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Beacock v. ICBC*, 2020 BCCRT 341

B E T W E E N :

ZACHARY BEACOCK

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
RONALEEN PALABAY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This small claims dispute is about an alleged June 28, 2019 parking lot collision (collision).

2. The applicant, Zachary Beacock, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), paid for his repairs and told him his claim was closed. When the respondent insured, Ronaleen Palabay, later denied the impact, ICBC investigated. Ultimately, ICBC internally concluded that Ms. Palabay was 100% at fault for the collision.
3. The applicant filed this dispute before ICBC's determination of liability. He does not seek to change ICBC's determination, but seeks \$2,000 in compensation for stress due to ICBC's handling and investigation of his claim, which he says was negligent. He also seeks \$400 for wasted vacation time dealing with ICBC.
4. ICBC denies that its investigation was negligent. It says the applicant is not entitled to compensation for lost vacation time because parties are required by law to cooperate in its investigations. Ms. Palabay says the applicant did not suffer any significant loss.
5. The applicant is self-represented. The respondents are represented by an ICBC adjuster, RS.
6. For the reasons that follow, I dismiss the applicant's claims.

## **JURISDICTION AND PROCEDURE**

7. 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 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.
8. 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.

9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.
11. The Dispute Notice included a request for an order that ICBC close the applicant's claim that it reopened when Ms. Palabay responded. I find that this issue is now moot, given that ICBC has reached a determination in the applicant's favour. It is also an order for injunctive relief (an order that a party do or stop doing something) and so I find it would be outside the tribunal's jurisdiction under section 118 of the *Civil Resolution Tribunal Act* (CRTA). For those reasons, I dismiss the applicant's request for an order to close his claim.

## **ISSUE**

12. The issue in this dispute is whether ICBC's investigation was negligent or in breach of its statutory obligations, and if so, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. Ms. Palabay provided a Dispute Response but did not provide evidence or submissions independent of ICBC's evidence and submissions. In the Dispute Response, she denied that any collision occurred. ICBC subsequently found Ms. Palabay 100% liable for the collision. ICBC's determination of liability is not an issue

before me in this dispute, so I accept ICBC's finding that Ms. Palabay caused the collision.

15. The applicant's complaints about how ICBC handled his claim can be categorized as follows:
- a. ICBC should not have told the applicant to repair his car until it was certain the deductible would be waived,
  - b. ICBC's conduct in the investigation was dishonest and deceitful,
  - c. ICBC was too lenient with Ms. Palabay, and
  - d. ICBC lost or failed to obtain evidence

### ***ICBC's Investigation***

16. ICBC and the applicant agree that on June 28, 2019, Ms. Palabay's vehicle struck the applicant's parked vehicle in a parking lot. The applicant was in his vehicle at the time. ICBC found the damage to the 2 vehicles was consistent.
17. ICBC attempted to reach Ms. Palabay for a report. ICBC documents confirm it sent her letters on July 1 and 5, and left phone messages on July 4 and 8, 2019. Ms. Palabay said she was out of town for work from July 3 to July 21, 2019.
18. It is undisputed that ICBC advised the applicant on July 11, 2019 that his deductible had been waived and that he could repair his car. He proceeded to have his car repaired. On August 5, 2019, ICBC emailed the applicant to say the claim was under review as Ms. Palabay had denied making contact with his vehicle. ICBC said it would be investigating the claim further, and depending on the outcome, the applicant may have had to pay a deductible.
19. Ultimately, on a date that is not clear from the evidence, ICBC determined that Ms. Palabay was 100% liable for collision. There is no dispute that ICBC has not increased the applicant's insurance rate as a result of the claim and has not

required the applicant to pay a deductible. ICBC paid for the applicant's vehicle repair.

20. Other tribunal decisions have held that to succeed in a claim that ICBC did not properly investigate an accident claim, an applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue in such cases is whether ICBC acted "properly or reasonably" in its investigation (see *Singh v. McHatten*, 2012 BCCA 286).
21. Although the applicant does not seek to overturn ICBC's decision on liability, I find the same principles apply here. This is because the applicant claims to have suffered losses as a result of ICBC's handling of the investigation. ICBC owes the applicant a duty of good faith, which requires ICBC act fairly in how it investigates and assesses the claim (*Bhasin v. Hrynew*, 2014 SCC 71).
22. ICBC says that if it determined that Ms. Palabay did not cause the damage, the applicant's claim would be considered a "hit and run" claim and he would have to pay his deductible, but there would be no change to his insurance premiums. The applicant says he would not have fixed his car if he knew there was a chance he may have to pay a deductible. I infer that this is because the damage, as shown by the photos, was minor.
23. ICBC says it would not be appropriate to wait until the third party has responded in each claim before resolving liability or waiving a claimant's deductible because some parties never respond. It also says, and I find, that a person can dispute a claim at any time within 2 years from the date of loss. When a dispute is filed, ICBC is obligated to investigate under section 74 of the *Insurance (Vehicle) Regulation* (IVR). Whether Ms. Palabay disputed liability 1 month or 23 months later, ICBC was required to investigate. While I acknowledge that the applicant was surprised to learn that Ms. Palabay disputed the claim, ICBC was not required to advise him to wait 2 years to repair his car to be sure there would be no dispute. In any event, nothing turns on this because the applicant did not have to pay the deductible.

24. The applicant says ICBC was dishonest. As an example, he says he spoke to RS several times before he filed his tribunal dispute. He says on the phone she told him she was not lawyer. He says this was false, based on a google search. ICBC denies that RS is a lawyer and says she is a claims adjuster in its litigation unit. Her email signature confirms this. I accept that RS is not a lawyer and was truthful about that with the applicant. That she works in the litigation department, as identified on her email signature, does not make her a lawyer. ICBC also says RS had no contact with the applicant until he initiated his tribunal claim. The applicant's correspondence prior to the tribunal dispute was different adjuster. I find no evidence that RS or ICBC were dishonest with the applicant.
25. The applicant says ICBC was too lenient with Ms. Palabay and should have investigated her for insurance fraud rather than defending her. As noted above, ICBC has a statutory duty to investigate a disputed claim. ICBC ultimately found that there was damage to both vehicles consistent with minor contact. Ms. Palabay said she did not notice contact. That does not mean Ms. Palabay attempted fraud.
26. The applicant says ICBC unfairly delayed processing his claim. ICBC admits there were multiple delays in this investigation but says some were attributable to Ms. Palabay and others were attributable to the applicant. There were initial delays in obtaining Ms. Palabay's authorization to be represented by counsel. ICBC says limited availability of estimate appointments caused delays in looking at Ms. Palabay's vehicle. ICBC says the investigation was complicated by the applicant initially providing the incorrect area of contact on Ms. Palabay's vehicle, which lead to confusion and arguments as to how the contact could have occurred. The applicant admits he initially provided the wrong area of contact.
27. Although the date that the investigation concluded is not established on the evidence, it was before January 2020 when the parties had concluded their submissions. That puts the total investigation time at less than 7 months. On balance, I find ICBC did not unreasonably delay its investigation.

28. The applicant says ICBC should have tried to obtain the parking lot footage, which he says would have confirmed Ms. Palabay was at fault. On August 7, 2019, he tried to obtain the footage but mall security would only release it to ICBC. The next day the adjuster contacted mall security, who said the footage had been deleted because it was only kept for 25 days. The applicant says ICBC should have obtained the footage after his initial claim was made. Given the damage was minor and Ms. Palabay did not dispute the claim until after the footage was deleted, I find ICBC was not negligent in failing to obtain the surveillance footage.
29. The applicant says ICBC told him it lost phone recordings. He does not say what these phone recordings were or how they were relevant to his claim. ICBC says the only conversations it records are the parties' initial reports. ICBC's evidence confirms that it recorded the applicant's initial report. I find the applicant has not established that ICBC lost any evidence relevant to his claim.
30. In summary, I find the applicant has failed to prove that ICBC acted unreasonably or negligently in its investigation. I therefore find that ICBC did not breach its statutory obligations or the contract of insurance.
31. However, even if I had found that ICBC's investigation was negligent, I would not have awarded the damages claimed. The applicant bears the burden of establishing his claim for \$2,000 for stress and anxiety. The applicant did not provide any objective evidence, such as medical records, in support of his claim.
32. There are some situations, known as "peace of mind" contracts, where damages are allowed for disappointment, mental distress, inconvenience or upset, such as a lost holiday. However, this is not one of those situations. While I accept that the applicant was frustrated with the handling of his claim, I find that is insufficient to warrant compensation. Similar to *Talbot v. Gill dba Lloyd's Drycleaners*, 2019 BCCRT 366, a decision not binding on me but which I find persuasive, I find the applicant's mental distress in this case was minor and not serious or prolonged. Given the overall evidence, including the lack of evidence supporting the applicant's

claim for mental distress, I find the applicant is not entitled to compensation for stress and anxiety.

### ***Lost vacation time***

33. The applicant says he had to take several days off “to try and get legal matters settled involving this claim.” He did not lose wages, but says he was forced to take some of his limited vacation days to avoid losing wages. He says he went to the provincial courthouse and was told to bring a tribunal claim instead. He also says he looked into obtaining legal advice. He submitted confirmation that he took a paid vacation day on August 23, which is the day he says he visited the provincial courthouse.
34. Ms. Palabay said it is not believable that the applicant had to miss work because of the incident. She also said no compensation should be payable simply for having to participate in a typical ICBC claims process.
35. ICBC says it does not compensate parties for their time. It says section 73 of the IVR requires insured parties to promptly give all available particulars of a claim, to cooperate with ICBC in the investigation of a claim, and to allow ICBC to inspect an insured vehicle at any reasonable time. To the extent that the applicant’s claim is about time spent participating in the claim investigation, I agree that he is not entitled to compensation.
36. To the extent that the applicant’s claim is about time spent investigating his legal options after ICBC reopened his claim, I also find he is not entitled to any remedy, even if I had found ICBC had improperly investigated his claim.
37. The tribunal does not compensate parties for their time spent dealing with a dispute, except in extraordinary circumstances. I find that time spent dealing with a dispute includes time spent investigating legal options and deciding whether to file a tribunal claim. I find these circumstances are not extraordinary, and the applicant was unsuccessful, so I dismiss the claim.



38. According to the CRTA and tribunal rules, as the applicant was unsuccessful, he is not entitled to reimbursement of tribunal fees.

## **ORDER**

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

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Micah Carmody, Tribunal Member