



# Civil Resolution Tribunal

Date Issued: June 3, 2020

File: SC-2020-000166

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whyte v. ICBC*, 2020 BCCRT 609

BETWEEN:

BRUCE CHRISTOPHER WHYTE

**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 small claims dispute is about overpayment of auto insurance premiums.
2. The applicant, Bruce Christopher Whyte, says he was overcharged for his auto insurance premiums after turning 65 in September 2017. He seeks a refund of

\$1,000, but later says the amount he overpaid was \$494.75. There is no explanation for this discrepancy.

3. The respondent, Insurance Corporation of British Columbia (ICBC), says Mr. Whyte was charged appropriately given the information he provided to his broker during the insurance policies' terms. In any event, ICBC says Mr. Whyte is not entitled to a refund as the policies have ended.
4. Mr. Whyte is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
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. 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.

## **ISSUE**

9. The issue in this dispute is whether Mr. Whyte is entitled to a refund for auto insurance in effect after September 2017?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Whyte 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. I note that despite being given the opportunity to do so, Mr. Whyte provided no evidence in support of his claim.
11. As noted above, Mr. Whyte says that he was overcharged for his auto insurance premiums after he turned 65 in September 2017, because he did not then receive the "senior rate class" discount. Mr. Whyte did not indicate how long he was allegedly overpaying for premiums, though I note his rate class was adjusted to the "senior rate class" on April 6, 2019. Although he claims \$1,000 as reimbursement, in his later submissions Mr. Whyte says that he overpaid a total of \$494.75 to ICBC. It is undisputed that Mr. Whyte did not purchase his auto insurance directly through ICBC, but rather through an independent insurance broker, who is not named as a party in this dispute.
12. It is undisputed that from May 15, 2017 to May 14, 2018, Mr. Whyte's policy included a rate class of "pleasure use". When that policy was issued and paid for on May 15, 2017, Mr. Whyte was not yet 65, and therefore not eligible for the "senior rate class". ICBC says a rate class is a declaration that is made the customer at the time the policy is initiated or renewed. ICBC says it cannot automatically change a

customer's rate class, such as when a customer turns 65. Rather, it says the insurance broker and customer work together to determine which rate class is most appropriate for the customer's situation at the time of purchase. The insurance premium is set at that time, and includes the owner's driving history, usage of the vehicle, and the vehicle's geographic location.

13. ICBC says that after he turned 65 in September 2017, Mr. Whyte could have returned to his insurance broker to have his rate class changed. I note that Mr. Whyte did return to his broker to change his address, mid-policy term, on February 17, 2018, and a rate class change could have been done at the same time. However, for reasons that are unexplained, it was not.
14. Further, when Mr. Whyte renewed his policy on May 15, 2018, it was again renewed under the "pleasure use" rate class. Mr. Whyte contacted ICBC on April 3, 2019, near the expiry of his 2018/2019 policy, asking about the "senior rate class". He was informed that in order to change it, all he had to do was visit an insurance broker with identification confirming his age, and his active policy would be amended for the remainder of the term. It appears Mr. Whyte did this on April 6, 2019, and he received a refund for the difference in premiums for the remainder of his 2018/2019 policy term. Mr. Whyte subsequently requested a refund from ICBC for the amount he overpaid since the time he turned 65, which ICBC refused.
15. ICBC says it is unable to provide refunds for rate class changes after the fact. It says a rate class is not simply a discount on premiums, but is a category of vehicle use. ICBC says the "senior rate class" has different use restrictions than the "pleasure use" rate class Mr. Whyte paid for before the April 6, 2019 policy amendment.
16. ICBC says, as a policy matter, retroactive refunds would cause customers to insure their vehicles for a higher rate class for greater vehicle use during their policy, but then request a refund after the expiry of the term, saying they only used the vehicle for some less expensive rate class. As I said in my prior decision of *Steckler v.*

ICBC, 2020 BCCRT 263, I find that type of situation would be inconsistent with the very purpose of the vehicle use rate classes.

17. In any event, Mr. Whyte is silent about whether he and his insurance broker discussed his rate class at the time he purchased the policies in question. However, I note that the insurance broker's notes on the 2018/2019 renewal policy specifically state the rate class was discussed. Additionally, Mr. Whyte initialed beside the description of the rate class on both his 2017/2018 and 2018/2019 policies.
18. Here, I find there is no basis to hold ICBC responsible for Mr. Whyte's alleged insurance premium overpayment. The evidence is that his insurance broker discussed his rate class with him, and that is the rate class that he paid for. Once Mr. Whyte advised his broker of his eligibility for the new rate class, it was appropriately changed. Therefore, on balance, I find Mr. Whyte has not shown he is entitled to any refund from ICBC. As a result, I dismiss his claims.
19. As I have dismissed the claims, I do not need to discuss Mr. Whyte's claim for damages in any detail. However, I note that Mr. Whyte did not provide any evidence in support of his claim for damages, either for \$1,000 or for \$494.75.
20. 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 Mr. Whyte was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees, or claimed dispute-related expenses.

## **ORDER**

21. I order Mr. Whyte's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair