



# Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2020-000032

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *City of Prince Rupert v. Risto*, 2020 BCCRT 748

BETWEEN:

CITY OF PRINCE RUPERT

**APPLICANT**

AND:

JESSE RISTO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is about municipal parking tickets. The applicant, City of Prince Rupert (the City), says that the respondent, Jesse Risto, did not pay \$240 for parking

violations. The City claims this \$240 in debt. The City is represented by a Bylaw Officer.

2. Mr. Risto says that the tickets are invalid for numerous reasons including because they were not in the proper form, they were not served properly, and because some of them are out of time under the *Offence Act*. He also argues he did not receive proper disclosure and says his *Charter* rights were violated. Mr. Risto represents himself.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
4. The CRT 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.
5. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. 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.

## ISSUE

7. The issue in this dispute is whether Mr. Risto has to pay the parking fines.

## EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant City must prove its claim on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. Mr. Risto made numerous arguments about why the tickets are invalid.
11. The tickets indicate that Mr. Risto parked his vehicle for longer than two hours on multiple occasions during 2019. The *Motor Vehicle Act* (MVA) section 83 (2) states that an owner of a motor vehicle must be held liable for a contravention of the traffic bylaws of a municipality. Section 83 (2.1) specifically states that the owner of a motor vehicle must be held liable for the prescribed enactment in relation to parking.
12. The City's Bylaw 2470 states that no person can park a vehicle in any place in contravention of a traffic control device that gives notice that parking is prohibited or restricted in such place. It is undisputed that there is a 2-hour restriction in the place Mr. Risto parked his car.
13. Mr. Risto questions whether the Bylaw is valid and whether the tickets were properly issued. He essentially argues that the fines are invalid and illegal. Based on caselaw, I find that reviewing the legality of the fines and the validity of the Bylaw is outside the jurisdiction of the CRT.
14. In *Bi et al. v. City of Surrey*, (2017 BCPC 386), the city imposed a number of fines, including some relating to parking tickets. Ms. Bi and Mr. Izaz argued that the City of Surrey's by-law enforcement was improper or illegal, and effectively sought reversal or recovery of the fees. The Court found that, to the extent that the

Applicants sought to have the Court declare the by-law enforcement illegal, and to reverse the imposition of the fees, they were seeking injunctive or declaratory relief. The Court said that the claims would require an examination of the legality of the by-laws and the exercise of authority pursuant to those same by-laws, and a declaration that the fees were wrongfully imposed and were to be returned. The Small Claims Division of the Provincial Court noted that it had no jurisdiction with respect to those claims and those remedies. Similarly, the CRT has no jurisdiction to order injunctive or declaratory relief.

15. In the case of *Sawatzky v. City of Abbotsford*, 2019 BCPC 255 the Defendant argued that where a claim requires a court to examine the question of whether or not a municipal body has acted properly in the enforcement of a bylaw, then this is something that must not be heard in Small Claims Court but must be decided in Supreme Court. The Court agreed and stated that the Claimant was asking it to rule on whether or not the Defendant acted properly in following and enforcing its bylaw. The Court noted that the *Judicial Review Procedure Act* directed that this must be determined in the Supreme Court of British Columbia and not in Small Claims Court. This meant that the Court lacked the jurisdiction to hear the claim.
16. Based on the above, I find that I do not have jurisdiction to consider the arguments Mr. Risto has put forward about the legality of the Bylaw or the validity of the fines.
17. Further, I note that the tickets state that a person must dispute the ticket within 14 days and if the person disputes the ticket they must go to Provincial Court. Here, Mr. Risto did not properly dispute the tickets or follow the proper procedure by going to the Provincial Court. He now asks the CRT to consider multiple reasons why he should not have to pay the tickets, including arguing that his *Charter* rights have been violated.
18. I first note that the CRT has limited authority to consider the *Charter*. Beyond this, I find that the CRT is not the correct forum to consider Mr. Risto's arguments on why he should not have to pay the fines. Mr. Risto is essentially launching a collateral attack. In *Wilson v. The Queen*, 1983 CanLII 35 (SCC), the Court noted that a

collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgement. In *M.K. v British Columbia (Attorney General) (MK)*, 2019 BCSC 166, the Court stated that underlying the doctrine of collateral attack is the need for litigants to raise issues at the first opportunity, so they can be dealt with in a timely and economical manner and with a minimum of court proceedings. In MK, the Court decided that the plaintiff should have raised her concerns in the previous legal proceeding.

19. I find that these principles are applicable here. There was a procedure for Mr. Risto to dispute the validity of the tickets. He did not do so and was deemed guilty. It is not open to Mr. Risto to now make arguments to the CRT to attack the validity of the fines which have already been imposed.
20. Mr. Risto also take issues with the number of tickets the City claims are owing. I note that the City excluded some of the tickets as they were outside the six-month window the City had to serve them. I also note that Mr. Risto states that two tickets which were served on him on January 23, 2020, was after the date of the original Dispute Notice of January 3, 2020. The city then amended the Dispute Notice on February 6, 2020. Mr. Risto did not dispute those tickets, so again was deemed guilty after 14 days. As the date of the amended Dispute Notice is 14 days later, I find that Mr. Risto must pay these tickets. This means the City has proven its claim that Mr. Risto must pay \$240 in fines for 12 tickets at \$20 each. Therefore, I find that Mr. Risto owes the City \$240 in fines.
21. The City is also entitled to pre-judgement interest under the *Court Order Interest Act (COIA)* from 14 days after service of the tickets. \$200 in tickets were served on December 17, 2019 so 14 days later would be December 31, 2019. Pre-judgement interest from that date until the date of this decision is \$1.96 under the *COIA*. \$40 in tickets were served on January 23, 2020 and became due on February 6, 2020. Pre-judgement interest from that date until the date of this decision is \$0.16 under the *COIA*.

22. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The City was successful, so it is entitled to reimbursement of its \$125 tribunal fees. The City did not request expenses. Mr. Risto requests reimbursement of the \$14 he paid for a copy of the certified bylaws because the City did not provide them. Because Mr. Risto was not successful, he is not entitled to have this expense reimbursed.

## **ORDERS**

23. I find that within 30 days the Mr. Risto must pay the City a total of \$367.12 broken down as follows:

- a. \$240.00 in debt for the outstanding fines,
- b. \$2.12 in pre-judgement interest under the COIA, and
- c. \$125.00 in tribunal fees.

24. 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

25. 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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Kathleen Mell, Tribunal Member