



# Civil Resolution Tribunal

Date Issued: July 21, 2020

File: SC-2020-001017

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Richard v. ICBC*, 2020 BCCRT 808

BETWEEN:

GARY RICHARD

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about insurance coverage for a stolen car.
2. The applicant, Gary Richard, says that his 2008 Infiniti G37 was stolen in October 2017. The respondent insurer, Insurance Corporation of British Columbia (ICBC), denied Mr. Richard's claim for vehicle theft because it found Mr. Richard made a

willfully false statement about the claim, which forfeited Mr. Richard's insurance coverage.

3. Mr. Richard says the police recovered his car in 2019 but he was not informed in a timely way. He could not afford to pay the storage fees, so did not retrieve his car from the tow company and the car was disposed of. Mr. Richard claims \$5,000 as compensation for his vehicle under his ICBC insurance policy.
4. In addition to its position that Mr. Richard forfeited his insurance, ICBC says that his claim is now out of time and should be dismissed.
5. Mr. Richard is self-represented. ICBC is represented by an ICBC adjuster.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
9. 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.

10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

11. The issues in this dispute are:

- a. Is Mr. Richard out of time to bring his claim against ICBC?
- b. If not, is Mr. Richard entitled to compensation for his stolen vehicle under his insurance policy?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant Mr. Richard 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.

### ***Is Mr. Richard out of time to bring his claim against ICBC?***

13. ICBC says that Mr. Richard is out of time to bring his claim. It says that the vehicle's reported theft was on October 6, 2017, but Mr. Richard did not submit his CRT application until January 31, 2020, which is past the 2-year limitation period.
14. The *Limitation Act* applies to disputes before the CRT. A limitation period is a specific time period 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.

15. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years. Section 8 says a claim is “discovered” on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to 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 seek to remedy the loss.
16. The only submission Mr. Richard made about the limitation issue, was that he filed his claim shortly after the car was stolen, which he says was well within the 2-year period. It appears that Mr. Richard may be confusing the need to report a claim to ICBC under his insurance policy, and bringing a court or tribunal proceeding to seek a remedy for a loss under the *Limitation Act*.
17. In any event, for the following reasons, I find that Mr. Richard filed his claim within the 2-year limitation period.
18. ICBC’s evidence includes a timeline of this dispute. Following Mr. Richard’s report that his vehicle was stolen on October 6, 2017, ICBC issued him a cheque for the vehicle. The date and specific amount of the cheque are not in evidence, but I accept Mr. Richard’s evidence that it was at little over \$11,000, since ICBC does not dispute this. However, before Mr. Richard could pick up the cheque, ICBC cancelled it and began an investigation into whether Mr. Richard had provided a willfully false statement about the vehicle theft. ICBC examined Mr. Richard under oath about this allegation on October 24, 2018.
19. At the conclusion of its investigation, ICBC determined that Mr. Richard had made a willfully false statement about his stolen vehicle, which it says forfeited his insurance coverage. ICBC also found that Mr. Richard had withheld surveillance video from the police and ICBC, which could have assisted the investigation of the vehicle’s theft. ICBC found this constituted a breach of Mr. Richard’s Autoplan Optional Policy.

20. ICBC did not formally advise Mr. Richard that his claim for vehicle theft was denied until its letter to him dated December 19, 2018. I find that this is the relevant date from which the limitation period started running because this is the date that Mr. Richard “discovered” that ICBC was not going to pay him for his stolen vehicle under his insurance policy.
21. Section 13.1 of the CRTA says that a limitation period stops running once an applicant submits a CRT application and pays the applicable fees. Mr. Richard made his application and paid the requisite fees on January 31, 2020, which is within 2 years of December 19, 2018. Accordingly, I find Mr. Richard’s claim is not barred under the *Limitation Act*.

***Is Mr. Richard entitled to compensation for his stolen vehicle under his insurance policy?***

22. Mr. Richard has the initial burden to prove that a loss occurred that was covered by his insurance policy. It is undisputed that Mr. Richard’s vehicle had a valid insurance policy that provided coverage if the vehicle was stolen. If Mr. Richard proves that his vehicle was stolen, the onus then shifts to ICBC to show that he made a willfully false statement material to the claim: *Serown v. Insurance Corp. of British Columbia*, 1999 CanLII 6446 (BC SC) at para. 13, referring to *Golden (1995) International Trading Ltd. v. Insurance Corp. of British Columbia*, 1998 CanLII 1672 (BC SC).
23. Mr. Richard says that on October 5, 2017, he left his front door unlocked overnight and the keys to his vehicle were hanging on a hook near the front door. He says that in the morning, he discovered the keys and the vehicle were missing. Mr. Richard filed a police report and made a claim with ICBC for the stolen vehicle. ICBC does not dispute that Mr. Richard’s car was stolen. Therefore, I find that Mr. Richard has met his burden to prove his vehicle was stolen.
24. The burden now shifts to ICBC to prove that Mr. Richard forfeited his insurance coverage by making a willfully false statement about the claim. Section 75(c) of the

*Insurance (Vehicle) Act* says that claims by an insured are invalid and the right of an insured to insurance money under the insurance contract is forfeited if the insured makes a willfully false statement with respect to the claim.

25. ICBC says that Mr. Richard had a video surveillance system installed at his residence at the time of the vehicle theft, but he removed it before the police came to investigate and he lied about its existence.
26. The police report from the vehicle theft investigation states that when the police arrived at Mr. Richard's residence, they observed wiring on the exterior of Mr. Richard's garage, where surveillance cameras were known to have been. The police asked Mr. Richard about the cameras, and he stated that he removed them several weeks earlier because he did not want to pay the monthly subscription fee. The police report states that a witness confirmed they had observed cameras on the exterior of Mr. Richard's house the day before the vehicle theft. The report also states that another police officer had seen cameras on Mr. Richard's garage on the same morning as the reported theft.
27. ICBC submitted as evidence the transcript of Mr. Richard's Examination Under Oath on October 24, 2018. During the examination, Mr. Richard repeatedly denied having a surveillance system installed prior to the October 2017 vehicle theft. He did not explain why he had told police at the time that he removed surveillance cameras several weeks before the theft.
28. Mr. Richard did not make any submissions or submit any evidence on the issue of the surveillance cameras or his alleged false statement. There is nothing to explain the discrepancy in his previous statements about whether he had a surveillance system installed at any time prior to the reported vehicle theft. I find the witness and police officer observations that there were surveillance cameras on Mr. Richard's residence within hours of the reported theft, persuasive in concluding Mr. Richard falsely stated at his October 24, 2018 examination that he never had a surveillance system prior to the vehicle theft.

29. Further, I find it is more likely than not that Mr. Richard had surveillance video of the vehicle theft and failed to provide it to ICBC or the police. ICBC says that withholding surveillance video evidence prevented the police and ICBC from identifying the persons who took his vehicle. I agree and I find that in so doing, Mr. Richard also breached his duty under section 5(1)(a)(ii) of his insurance policy, which says if loss of the insured vehicle occurs, the insured must file a written statement setting out all available information on the manner in which the loss occurred.
30. I find that ICBC has met its burden to prove that Mr. Richard forfeited his vehicle insurance and that it properly refused to compensate Mr. Richard for his stolen vehicle under his insurance policy.
31. Mr. Richard also says that when his stolen vehicle was recovered in 2019, ICBC did not inform him. He says that due to delay in discovering his vehicle's recovery, the storage fees were higher than he could afford. I infer he is arguing an alternative basis for why ICBC should compensate him for his vehicle. Mr. Richard did not submit any evidence or further submissions on this aspect of his claim.
32. ICBC's evidence shows that Mr. Richard's vehicle was recovered on April 13, 2019 after it was involved in a hit and run accident. The evidence also shows that both the police and the tow company storing the recovered vehicle tried several times to contact Mr. Richard, including by registered mail and attending at his last known address.
33. The evidence shows that more than 5 months after the vehicle was recovered, Mr. Richard contacted the tow company about his vehicle, and noted that he had a different address. He advised the tow company that he would pick the vehicle up within 3 days. It is undisputed that Mr. Richard did not attend the storage facility to retrieve his vehicle. As noted, Mr. Richard says he could not afford the storage fees associated with the vehicle's 5 months in storage.

34. ICBC says that the police did not notify it of the vehicle's recovery because ICBC did not accept Mr. Richard's theft claim. While the evidence shows that the police and tow company did communicate with ICBC to obtain Mr. Richard's last known contact information, I infer that ICBC must have an open claim connected to a stolen vehicle for it to take an interest in its recovery. So, ICBC says it did not know the vehicle was recovered to be able to inform Mr. Richard. In any event, ICBC says it is the police's obligation to advise a registered owner that a stolen vehicle has been recovered.
35. ICBC also argues that Mr. Richard did not maintain his current contact information as required by sections 14 and 31 of the *Motor Vehicle Act* (MVA), which require a vehicle's owner and a person with a driver's licence to notify ICBC of an address change within 10 days. I find Mr. Richard did not comply with these sections of the MVA, nor did he provide any evidence or submissions about how ICBC is responsible for any alleged delay in notifying him about his vehicle's recovery.
36. I find Mr. Richard has failed to prove that ICBC was obligated to contact him or that ICBC was responsible for any delay in notifying Mr. Richard about his vehicle's recovery. As I found above, ICBC properly refused to compensate Mr. Richard for his stolen vehicle. Therefore, I dismiss Mr. Richard's claims against ICBC.
37. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Richard was the unsuccessful party so is not entitled to reimbursement of his CRT fees. ICBC did not pay any CRT fees and did not claim any dispute-related expenses.

## **ORDER**

38. I dismiss Mr. Richard's claim and this dispute.



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Kristin Gardner, Tribunal Member