



# Civil Resolution Tribunal

Date Issued: April 27, 2022

File: SC-2021-004820

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chamberlain v. ICBC*, 2022 BCCRT 489

B E T W E E N :

PHILLIP CHAMBERLAIN

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This small claims dispute is about an employment contract. The applicant, Phillip Chamberlain, is a former employee of the respondent, Insurance Corporation of

British Columbia (ICBC). Mr. Chamberlain resigned on June 8, 2021 and says he is owed 4 weeks' wages under the contract. Mr. Chamberlain claims \$4,600.

2. ICBC says at the time of Mr. Chamberlain's resignation, he had been on unpaid sick leave for over 2 months. ICBC also says when Mr. Chamberlain resigned, he said it was effective immediately and had given no indication of any potential return to work. ICBC says Mr. Chamberlain is not entitled to 4 weeks' wages based on 4 weeks' resignation notice that he did not give. ICBC also says since Mr. Chamberlain was on unpaid leave at the time, he suffered no loss.
3. Mr. Chamberlain is self-represented. ICBC is represented by an in-house lawyer, Sharon Park.

## **JURISDICTION AND PROCEDURE**

4. 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). CRTA section 2 states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. CRTA section 42 says 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.

7. 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.
8. The Employment Standards Branch (ESB) has exclusive jurisdiction over statutory entitlements under the *Employment Standards Act* (ESA). However, I find that the CRT, and not the ESB, has jurisdiction over this dispute. This is because I find Mr. Chamberlain's claim arises from his employment contract with ICBC, and is a debt or damages claim within the CRT's jurisdiction under CRTA section 118.

## **ISSUE**

9. The issue in this dispute is whether Mr. Chamberlain is entitled to 4 weeks' wages under his employment contract with ICBC, following his June 8, 2021 resignation.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Chamberlain must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. In September 2018, ICBC hired Mr. Chamberlain as a Corporate Security Investigator, a non-bargaining unit position. On March 23, 2021, Mr. Chamberlain began an unpaid sick leave. None of this is disputed.
12. On June 8, 2021, Mr. Chamberlain emailed ICBC and wrote he was resigning his position, "as of" that day, saying it was in his best interests for his health and wellness. Mr. Chamberlain noted his being on unpaid sick leave at the time. Mr. Chamberlain concluded his email that he regretted he could "no longer continue working for ICBC." I return to this email below.

13. It is undisputed that at the time of Mr. Chamberlain's June 8, 2021 resignation that there was no plan for any return to work.
14. On June 8, 2021, ICBC emailed Mr. Chamberlain saying it accepted his resignation "effective today".
15. ICBC says given the circumstances of Mr. Chamberlain being on unpaid sick leave at the time, it did not seek to enforce the contractual requirement for Mr. Chamberlain to provide 4 weeks' notice.
16. Mr. Chamberlain's claim for 4 weeks' wages turns on his interpretation of section 4.7 of the parties' employment contract. That section says:
  - Mr. Chamberlain could terminate his employment at any time by providing ICBC with 4 weeks' notice in writing.
  - Where Mr. Chamberlain provides ICBC with written notice under this provision, "ICBC may waive such notice, in whole or in part, in which case" Mr. Chamberlain's employment will terminate on the date specified by ICBC. In such event, ICBC will pay Mr. Chamberlain the base salary he would have received for the balance of the 4 week notice period.
17. I turn then to the heart of this dispute. Mr. Chamberlain says his June 8, 2021 resignation email gave ICBC 4 weeks' notice to end his employment, which ICBC did not enforce. So, Mr. Chamberlain says ICBC owes 4 weeks' wages under section 4.7. I disagree. I find there is nothing in Mr. Chamberlain's June 8 email that references 4 weeks' notice or even suggests that he was giving 4 weeks' notice. To the contrary, as noted the email says Mr. Chamberlain could "no longer continue working for ICBC." Given Mr. Chamberlain was on unpaid sick leave at the time, with no plan for any return to work, I do not accept that his email could reasonably be construed as giving 4 weeks' notice and I find it did not.
18. With that, I find ICBC has no obligation under section 4.7 of the contract to pay Mr. Chamberlain 4 weeks' salary. Again, I say this because I find he never gave ICBC 4

weeks' notice. In other words, ICBC's obligation to pay was only triggered if Mr. Chamberlain had given 4 weeks' notice and ICBC had elected to waive the notice period. Here, I find Mr. Chamberlain never gave 4 weeks' notice. So, I find ICBC owes nothing.

19. Even if I had found Mr. Chamberlain had given 4 weeks' notice (which I do not), the contract says he would be paid the base salary he would have received for the balance of the 4-week period. Since Mr. Chamberlain was undisputedly earning zero salary at the time and had no declared intention of returning to work, the salary he would have received was \$0.00 in any event.
20. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Chamberlain was unsuccessful, I dismiss his claim for reimbursement of CRT fees. ICBC did not pay fees and no dispute-related expenses were claimed.

## **ORDER**

21. I dismiss Mr. Chamberlain's claim and this dispute.

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Shelley Lopez, Vice Chair