



# Civil Resolution Tribunal

Date Issued: May 4, 2022

File: SC-2021-009164

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van't Haaf v. ICBC*, 2022 BCCRT 535

BETWEEN:

JOHN VAN'T HAAF

**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 is a final decision of the Civil Resolution Tribunal (CRT), further to a preliminary referral on 2 questions. The first is whether the applicant, John Van't Haaf, is out of time to bring his claim against the respondent, Insurance Corporation of British Columbia (ICBC). The second is whether the CRT must refuse to resolve this dispute because it is a "coverage dispute" under the *Insurance (Vehicle) Regulations*, which

requires it to be decided by arbitration. This is not a decision on the merits of Mr. Van't Haaf's claim.

2. By way of background, Mr. Van't Haaf says that his vehicle was damaged in a December 10, 2018 motor vehicle accident. He says he paid \$3,868.14 for his vehicle repairs, but ICBC only offered to reimburse him \$808.25, subject to safety concerns with the vehicle being addressed. Mr. Van't Haaf claims the full \$3,868.14 he paid for repairs.
3. ICBC says its material damage department determined that Mr. Van't Haaf's vehicle was a total loss after the accident. However, ICBC says it offered to let Mr. Van't Haaf keep his vehicle in exchange for the "maximum repair amount". In any event, ICBC argues that Mr. Van't Haaf has brought this dispute past the applicable 2-year limitation period. It also says this is a "coverage dispute" and must be decided by arbitration.
4. Mr. Van't Haaf is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA 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.
6. Section 39 of the CRTA says the CRT 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 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.

7. 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.
8. Section 42 of the CRTA 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.
9. 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**

10. The issues are:
  - a. Whether Mr. Van't Haaf is out of time to bring his claim against ICBC, and
  - b. If not, whether the CRT must refuse to resolve this dispute because the *Insurance (Vehicle) Regulations* (IVR) requires it to be arbitrated.

## **EVIDENCE AND ANALYSIS**

### ***Is Mr. Van't Haaf out of time to bring his claim against ICBC?***

11. The CRT invited the parties to make submissions about whether the limitation period for the dispute had expired. The burden of proving the applicable limitation period and whether it has expired falls on the party relying on it (here, ICBC). I have considered both parties' submissions and evidence, but I refer only to what I find is necessary to explain my decision.

12. Section 6 of the *Limitation Act* states that a proceeding in respect of a claim must be started within 2 years of when it was “discovered”. Under section 8 of the *Limitation Act*, a claim is discovered when the applicant knew, or reasonably knew, it had a claim against the respondent and that a court or tribunal proceeding was an appropriate remedy.
13. As noted, the accident that caused Mr. Van’t Haaf’s vehicle damage occurred on December 10, 2018. However, that is not necessarily the date that Mr. Van’t Haaf discovered he had a potential claim against ICBC for allegedly improperly failing to reimburse the full cost of his vehicle repairs. So, I asked the parties to provide further submissions about when Mr. Van’t Haaf discovered his potential claim.
14. ICBC provided its file notes showing it left Mr. Van’t Haaf a message on December 20, 2018 advising that his vehicle was “not economically reparable”. ICBC then sent Mr. Van’t Haaf a January 2, 2019 email offering him \$1,510.19, less his deductible, as a total loss payout for his vehicle. It is undisputed that Mr. Van’t Haaf ultimately declined to accept a total loss payout and chose to have his vehicle repaired instead. I find that by January 2, 2019, Mr. Van’t Haaf had discovered ICBC was not going to cover the full cost of his vehicle repairs. So, I find that the 2-year limitation period for this dispute expired on January 2, 2021.
15. Section 13 of the CRTA says the running of time stops when the applicant files an application with the CRT and pays the required fee. Mr. Van’t Haaf applied for CRT dispute resolution on December 1, 2021, so I find he filed his CRT claim out of time.
16. However, this does not necessarily end the matter because Mr. Van’t Haaf argues that the limitation period was suspended for one year due to the COVID-19 pandemic.
17. On March 18, 2020, the British Columbia provincial government declared a state of emergency. On March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order 86/2020 (MO86) under the *Emergency Program Act*, which was repealed and replaced by Ministerial Order 98/2020 (MO98), effective April 15, 2020. Both MO86 and MO98 suspended mandatory limitation periods for court

actions, where the claim or appeal must be commenced in the Provincial Court, Supreme Court, or the Court of Appeal. However, the orders suspending limitation periods did not apply to disputes commenced in a tribunal such as the CRT. Rather, the orders said that a tribunal, such as the CRT, **may** waive, extend, or suspend a mandatory time period.

18. On July 10, 2020, the *COVID-19 Related Measures Act* (CRMA) came into force. Section 3(5) and item 7 of Schedule 2 of the CRMA say that the CRT's ability to waive, extend, or suspend mandatory time periods under MO98 continues until 90 days after the state of emergency ends. For clarity, under the CRMA, the CRT's authority to extend timelines is discretionary, not mandatory. So, contrary to Mr. Van't Haaf's submission, I find neither MO86 nor MO98 automatically suspended the limitation period for bringing CRT disputes.
19. I have previously found that the discretion granted by the Ministerial Orders to extend the limitation period generally requires evidence that the COVID-19 pandemic itself contributed to an applicant filing their dispute after the applicable limitation period: see *Pacific West Mechanical Ltd. v. The Owners, Strata Plan LMS 1367*, 2021 BCCRT 1266. I come to the same conclusion here.
20. Mr. Van't Haaf did not explain the delay in starting this dispute. In particular, he did not provide any evidence that the COVID-19 pandemic was responsible for his failure to apply for CRT dispute resolution before January 2, 2021. In fact, he admits that he filed a previous CRT dispute in February 2020 (SC-2020-001622) over the same matters at issue in this dispute. The CRT ultimately refused to resolve the previous dispute because Mr. Van't Haaf did not respond to the CRT's requests for information. As noted, CRTA section 13 says the running of the limitation period stops when the applicant files a CRT application. So, given Mr. Van't Haaf filed a new CRT application for this dispute SC-2021-009164, I find it is a "fresh" claim for the purpose of determining the limitation period.
21. In any event, I find the fact that Mr. Van't Haaf filed the previous CRT dispute shows that he was capable of filing a CRT claim within the limitation period. On balance, I

find the COVID-19 pandemic did not prevent Mr. Van't Haaf from filing his claim in this dispute SC-2021-009164 within the 2-year limitation period.

22. Further, the state of emergency in British Columbia ended on June 30, 2021. As noted, the CRMA says MO98 was repealed 90 days after the state of emergency ended. So, I find that the CRT does not have the discretion to extend the limitation period for disputes started after September 28, 2021, which is 90 days after the state of emergency ended. Given that Mr. Van't Haaf did not start this CRT dispute until December 1, 2021, I find I have no discretion to extend the limitation period for this dispute. Though, even if I did still have discretion under MO98, for the reasons provided above, I would have declined to exercise my discretion in this case.
23. As I have found Mr. Van't Haaf filed this dispute after the applicable limitation period expired, and there is no basis for me to extend it, I find I must dismiss his claim.
24. Given this conclusion, I find I do not have to address the question of whether the CRT must refuse to resolve this dispute because the IVR requires coverage disputes such as this to be arbitrated.
25. 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. As Mr. Van't Haaf was unsuccessful, I dismiss his claim for CRT fees and dispute-related expenses. ICBC did not pay any fees and claimed no dispute-related expenses.

## **ORDER**

26. I dismiss Mr. Van't Haaf's claims and this dispute.

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Kristin Gardner, Tribunal Member