

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mohiuddin v. Insurance Corporation of  
British Columbia,*  
2024 BCSC 925

Date: 20240530  
Docket: S251734  
Registry: New Westminster

Between:

**Mohammed Hazeq Mohiuddin and Niharika Tiwari**

Plaintiffs

And

**Insurance Corporation of British Columbia**

Defendant

Before: The Honourable Mr. Justice Veenstra

## Reasons for Judgment

The Plaintiff, Niharika Tiwari:

Appearing in person  
and as representative of  
M.H. Mohiuddin

Counsel for the Defendant:

J.A. Morris

Place and Date of Hearing:

New Westminster, B.C.  
March 6, 2024

Place and Date of Judgment:

New Westminster, B.C.  
May 30, 2024

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**Introduction**

[1] The plaintiffs and their two children were involved in a motor vehicle accident in Surrey, BC, on June 27, 2021 (the “Accident”). The Accident occurred after May 1, 2021, and thus the plaintiffs’ entitlement to compensation is subject to what is referred to by the defendant, Insurance Corporation of British Columbia (“ICBC”), as “Enhanced Accident Benefits”. It is also frequently referred to as the “no-fault” system.

[2] The plaintiffs have been extremely frustrated by their treatment by ICBC and, on November 21, 2023, commenced the present action against ICBC.

[3] ICBC now applies to:

- a) Stay the action in respect of the plaintiff Mohiuddin; and
- b) Strike out the claims of the plaintiff Tiwari.

**Facts**

**Background**

[4] Following the Accident, the plaintiffs sought accident benefits from ICBC under Part 10 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231 [*Insurance (Vehicle) Act*]. ICBC paid various benefits after the Accident, including health care and rehabilitation and caregiver benefits. At some point in time, those benefits were reduced or terminated by ICBC.

**The CRT Claims**

[5] Ms. Tiwari challenged ICBC’s decision to terminate her benefits through filing a claim in 2022 with the Civil Resolution Tribunal (“CRT”). On October 26, 2023, her claim was decided by a Vice Chair of the CRT. The decision was amended on December 20, 2023. The decision has been published and is indexed at 2023 BCCRT 922.

[6] The Vice Chair noted at para. 11 that Ms. Tiwari was undisputedly injured as a result of the Accident, and in particular the parties agreed that Ms. Tiwari suffered soft tissue injuries to her neck, right shoulder and lower back. The decision indicates that Ms. Tiwari and ICBC did not agree as to whether a left wrist injury was related to the Accident – with ICBC taking the position that complaints about pain in the wrist did not appear in any medical reports until three months after the Accident, and so it was not related to the Accident – despite the medical evidence to opposite effect.

[7] The Vice Chair concluded that the wrist injury was related to the Accident. She did not accept all of Ms. Tiwari’s claims, but ordered that ICBC fund 20 additional sessions of both kinesiology and physiotherapy treatments, and pay Ms. Tiwari \$3,477.87 in additional ADL benefits from June 1 to August 30, 2022. [ADL benefits are the costs of assistance with “activities of daily living”.] In addition, the Vice Chair stated:

39. Nothing in this decision precludes Mrs. Tiwari from claiming additional rehabilitation benefits from ICBC beyond what I have ordered here.

40. I make no findings about Mrs. Tiwari’s entitlement to ADL benefits beyond August 30, 2022, and she may re-apply to the CRT if those benefits are requested and subsequently denied by ICBC.

[8] The practical inutility of receiving a decision in October 2023 requiring ICBC to fund benefits up to and including August 2022 is apparent.

[9] Mr. Mohiuddin also challenged ICBC’s refusal to accept his claims through filing a dispute notice with the CRT on June 6, 2023. The claim submitted on the part of Mr. Mohiuddin alleges that he suffered a head injury, and continues to experience severe concussive effects, including migraines, vertigo and vision issues, and that for several months after the Accident he needed help just getting out of bed or going to the toilet. It asserts significant neck stiffness and pain, as well as weakness in his right leg. The claim asserts among other things that ICBC was “negligent for delaying OT therapies”, had “failed to evaluate the conditions for his ADL benefits” for several months, had refused to approve treatments recommended by his treating physician and neurologist, had ignored recommendations made by Mr. Mohiuddin’s

occupational therapist and stopped paying for occupational therapy services, and advances a claim for psychological stress brought on by ICBC's adjuster.

[10] ICBC filed its response on August 23, 2023. ICBC asserts that it had obtained a report from an occupational therapist that, based on its prescribed scoring system, rated Mr. Mohiuddin in such a way that no further services would be funded.

[11] At the time the present application was heard in March 2024, some seven months after ICBC's submission had been filed, nothing further had been heard from the CRT. The ICBC adjuster, in an affidavit filed in support of this application, commented that Mr. Mohiuddin's dispute:

... is ongoing. The next step is for the Civil Resolution Tribunal to assign a case manager. After a case manager is assigned, the dispute will move through the negotiation, facilitation and adjudication phases at the Civil Resolution Tribunal.

[12] Nothing in the evidence gave any indication as to when that process might begin to move forward.

### **Notice of Civil Claim**

[13] On November 21, 2023, the plaintiffs initiated this action by filing a notice of civil claim ("NOCC") against ICBC. The plaintiffs are self-represented and filed the NOCC without the benefit of legal advice.

[14] The NOCC outlines the plaintiffs' respective injuries sustained in the Accident, including serious ongoing injuries, and their experience with ICBC since the Accident. The plaintiffs say that ICBC has, unreasonably or without justification, refused or delayed various treatments, assessments, and benefits that plaintiffs say they should have received. They claim that ICBC's conduct in this regard has caused them and their family "suffering" (NOCC, para. 1.5) and had a "terrible impact on [their] quality of life" (NOCC, para. 1.24), negatively impacting their mental and physical health (NOCC, paras. 1.24 and 2.13).

[15] I note that the claims with respect to Mr. Mohiuddin in the NOCC largely copy what is set out in his dispute notice form filed with the CRT.

[16] In Part 2: Relief Sought, the plaintiffs seek:

- a) “2 million CAD from ICBC or any thing that will be the decided by the Honorable Justice since our evaluation and assessments for permanent impairment were denied and declined as other benefits”;
- b) A “logical explanation for Mental, Physical, financial damage caused by ICBC”;
- c) ICBC “accurately writing the reports that needed corrections and the errors addressed by us”; and
- d) A “safety statement that would cause us any suffering due to breach in privacy by misusing the our sensitive information that was fed through the Referred professionals by ICBC or its members.”

[17] In Part 3 of the NOCC, where they are to describe the legal basis for the claim, the plaintiffs state:

1. Delayed Treatment, Under-treatment , Maltreatment repeated, Repeated discrimination, Inaccurate reports, Multiple adjuster changes, Exaggeration in reports, physical and mental abuse, Forced and pain treatments, UN-appointed interactions, unethical union formations, mental distress, Delayed salary payments, declined payments, delayed bill payments, hyper manipulative conversations, Refused treatments, Stopped the professionals from providing the reports, illogical explanations to stop the benefits, Unsafe behavior, feeding on sensitive informations and trying to misuse it, Extremely unusual behavior of professionals referred by ICBC, Forced Social Isolations for past two years after the accident, Taking repeated number of signatures of the documents for treatments and not providing them, Taking impressions, Wrongful accusations, Counseling of unsafe treatments even after many request from the treating physicians and healthcare professionals of ICBC
2. We sought relief due to the above mentioned challenges that we have faced by ICBC and there professionals or associates.

[18] On December 12, 2023, ICBC filed its response to civil claim, denying the facts set out in the plaintiffs' NOCC, opposing the relief sought, and asking that their claim be dismissed with costs.

**Issues**

[19] On this application, filed November 20, 2023, ICBC seek orders that would:

- a) Stay Mr. Mohiuddin's claim for damages related to the provision of benefits, pending determination by the CRT of his entitlement to benefits; and
- b) Strike Ms. Tiwari's claim for damages against ICBC related to the provision of benefits.

**Legal Framework**

**Compensation for Motor Vehicle Accident Claims**

[20] Prior to May 2021, a person injured in a motor vehicle accident caused by the negligence of another person had the right to bring an action for damages against the person at fault. In such an action, damages were assessed on the basis of providing full compensation for the losses suffered by the injured person. The injured person was entitled at law to be put in the position they would have been in had the accident not occurred, so far as money can do.

[21] Claims arising from motor vehicle accidents were generally pursued by way of court action against the allegedly negligent party, who would in most cases be defended by ICBC pursuant to its obligations as liability insurer to the defendant. ICBC was only rarely named as a party itself – most commonly that would occur in hit-and-run cases or on other occasions where the names of the owner and driver who caused an accident were not available.

[22] The principle of full compensation has been abrogated by statute in British Columbia. In May 2021, a new Part 10 of the *Insurance (Vehicle) Act* came into

force. Section 114(1) provides that the new Part 10 “applies to an accident occurring on or after May 1, 2021”, and s. 115 provides that:

Despite any other law or enactment but subject to this Part,

- (a) a person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle arising out of an accident, and
- (b) no action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident.

[23] There are limited exceptions to the prohibition in s. 115 – none of which are applicable in the present case.

[24] Instead of a fault-based system providing for full compensation, with awards to be determined by the courts, those injured in accidents are eligible for statutory accident benefits, regardless of who is at fault. ICBC acts as a first party insurer of any injured party, providing accident benefits pursuant to the terms of its policy with the injured party, rather than as a third party liability insurer to the driver alleged to be at fault.

[25] The available benefits under this accident benefits policy include:

- a) “health care, rehabilitation and related benefits”, pursuant to Division 4 of Part 10;
- b) “permanent impairment compensation” pursuant to Division 5 of Part 10;
- c) Various sorts of income replacement benefits pursuant to Divisions 6-10 of Part 10;
- d) “family and caregiver benefits” pursuant to Division 11 of Part 10; and
- e) “death benefits” pursuant to Division 13 of Part 10.

[26] The benefits are as defined by statute, rather than by the principle of full compensation inherent in the former fault-based system.



[27] I note that, even under the fault-based system, there was a base level of benefits provided to anyone injured in a motor vehicle accident (regardless of fault) pursuant to Part 7 of the *Insurance (Vehicle) Act*. The no-fault benefits available under Part 10 for accidents occurring on or after May 1, 2021, are more extensive than the no-fault benefits that were available under Part 7 for accidents occurring prior to that date. As well, the new system is designed to facilitate direct payment to service providers where feasible, rather than requiring injured persons to pay up front and subsequently seek reimbursement. In these two senses, the new benefits are enhanced.

### **The Claims Process and Dispute Resolution**

[28] An insured who claims to be entitled to Part 10 benefits must apply to ICBC. Section 165 provides that:

- (1) A claim for benefits under this Part must be made in the form and manner required by the corporation.
- (2) A claim for benefits must be made within the time period prescribed.
- (3) The corporation may extend a time period prescribed for the purposes of subsection (2) if the corporation considers it equitable to do so.
- (4) The corporation may exercise its power under subsection (3) before or after the prescribed time period has elapsed.
- (5) If a claimant fails to make a claim respecting an accident within the time period prescribed for the purposes of subsection (2), the claimant is not entitled to benefits respecting that accident, unless the corporation grants an extension under subsection (3) and the claimant makes a claim within that extended period.

[29] Claims are reviewed by ICBC adjusters, who determine whether each claim for benefits is valid.

[30] A person who is unsatisfied with the decision of an ICBC adjuster has recourse through the CRT.

[31] Under the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 [CRTA], claims regarding entitlement to accident benefits (under either Part 7 or Part 10) for

accidents that occurred after April 1, 2019, are within the exclusive jurisdiction of the CRT. Section 133 states:

- (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction in a dispute, in respect of an accident, over a claim concerning one or more of the following:
  - (a) the determination by an insurer of entitlement to benefits paid or payable under the *Insurance (Vehicle) Act*;
  - ...
- (2) For the purposes of this Act, the tribunal
  - (a) has exclusive jurisdiction in respect of claims described in subsection (1) (a) or (b) of this section, ...
- (3) For certainty, a person may make a request for tribunal resolution in more than one tribunal proceeding relating to an accident.

[Emphasis added.]

[32] Section 16.1 of the *CRTA* provides that any case in this court that falls within the exclusive jurisdiction of the tribunal must be dismissed:

- 16.1 (1) Subject to subsection (2) and section 16.4 (1) and (2) [*bringing or continuing claim in court*], if, in a court proceeding, the court determines that all matters are within the jurisdiction of the tribunal, the court must,
- (a) in the case of a claim within the exclusive jurisdiction of the tribunal, dismiss the proceeding,
  - (b) in the case of a claim in respect of which the tribunal is to be considered to have specialized expertise, dismiss the proceeding unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim, or
  - (c) in any other case, stay or dismiss the proceeding, as the court considers appropriate, unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim.

[33] ICBC relies upon both s. 16.1(1)(a) and (c) for the present application.

**Bad Faith Claims Against Insurers**

[34] The parties did not make detailed arguments before me about the legal basis for the plaintiffs' proposed claims against ICBC for the manner in which it dealt with the plaintiffs. I provide in the next three paragraphs a brief summary of general principles found in recent cases involving claims against insurers.

[35] An insurer will generally have a duty to act in good faith in the claims handling process. As summarized in *Godwin v. Desjardins Financial Security Investments Inc.*, 2018 BCSC 99:

#### **Breach of Contract and Bad Faith**

[144] The contractual obligation that insurers have to provide indemnity for losses covered under policies of insurance is distinct from their obligation to act in good faith. The distinction was discussed in the judgement of Laskin J.A. (dissenting in part) in *Whiten v. Pilot Insurance Company* (1999), 42 OR (3d) 641 (rev'd on other grounds, 2002 SCC 18):

A contract of insurance between an insurer and its insured is one of utmost good faith. Although the insurer is not a fiduciary, it holds a position of power over an insured; conversely, the insured is in a vulnerable position, entirely dependent on the insurer when a loss occurs. For these reasons, in every insurance contract an insurer has an implied obligation to deal with the claims of its insureds in good faith. That obligation to act in good faith is separate from the insurer's obligation to compensate its insured for a loss covered by the policy. An action for dealing with an insurance claim in bad faith is different from an action on the policy for damages for the insured loss. In other words, breach of an insurer's obligation to act in good faith is a separate or independent wrong from the wrong for which compensation is paid.

[Citations omitted.]

[145] The nature of an insurer's duty of good faith in the claims handling process was described in the reasons of O'Connor J.A. in *702535 Ontario Inc. v. Non-Marine Underwriters Members of Lloyd's London* (2000), 184 D.L.R. (4th) 687 (Ont. C.A.) [702535], as cited with approval in *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 [Fidler]:

29. The duty of good faith also requires an insurer to deal with its insured's claim fairly. The duty to act fairly applies both to the manner in which the insurer investigates and assesses the claim and to the decision whether or not to pay the claim. In making a decision whether to refuse payment of a claim from its insured, an insurer must assess the merits of the claim in a balanced and reasonable manner. It must not deny coverage or delay payment in order to take advantage of the insured's economic vulnerability or to gain bargaining leverage in negotiating a settlement. A decision by an insurer to refuse payment should be based on a reasonable interpretation of its obligations under the policy. This duty of fairness, however, does not require that an insurer necessarily be correct in making a decision to dispute its obligation to pay a claim. Mere denial of a claim that ultimately succeeds is not, in itself, an act of bad faith.

[146] As noted in *Fidler*, at para. 71:

...an insurer will not necessarily be in breach of the duty of good faith by incorrectly denying a claim that is eventually conceded, or judicially determined, to be legitimate.

[36] Where a party establishes that an insurer has breached its duty of good faith, available claims may include aggravated damages and damages for mental distress: *Gascoigne v. Desjardins Financial Security Life Assurance Company (Desjardins Insurance)*, 2019 BCSC 1241 at paras. 150-155, aff'd at 2020 BCCA 316. Where the insurer's conduct is particularly egregious, an award of punitive damages may be warranted: *Gascoigne* at paras. 161-162.

[37] With respect to damages for mental distress, as noted in *Rose v. British Columbia Life & Casualty Company*, 2012 BCSC 1296:

[47] There is no question that damages for mental distress are recoverable in a disability insurance context, even when benefits have been restored before trial. In *Fidler v. Sun Life Assurance Company of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3, which involved just such a fact pattern, McLachlin C.J. and Abella J., writing for the Court, stated:

[57] Mental distress is an effect which parties to a disability insurance contract may reasonably contemplate may flow from a failure to pay the required benefits. The intangible benefit provided by such a contract is the prospect of continued financial security when a person's disability makes working, and therefore receiving an income, no longer possible. If benefits are unfairly denied, it may not be possible to meet ordinary living expenses. This financial pressure, on top of the loss of work and the existence of a disability, is likely to heighten an insured's anxiety and stress. Moreover, once disabled, an insured faces the difficulty of finding an economic substitute for the loss of income caused by the denial of benefits. See D. Tartaglio, "The Expectation of Peace of Mind: A Basis for Recovery of Damages for Mental Suffering Resulting from the Breach of First Party Insurance Contracts" (1983), 56 *S. Cal. L. Rev.* 1345, at pp. 1365-66.

[58] People enter into disability insurance contracts to protect themselves from this very financial and emotional stress and insecurity. An unwarranted delay in receiving this protection can be extremely stressful. ...

[48] In that same decision, McLachlin C.J. and Abella J. also confirmed that such damages are not an exception to the rule in *Hadley v. Baxendale*, but are rather the result of the application of the foreseeability principle that applies generally to determine the availability of damages for breach of contract: *Fidler*, at paras. 49 and 53-54.

[38] An insured must generally establish a breach of duty under the insurance contract before there is a cause of action against the insurer for bad faith:

*Andreychuk v. RBC Life Insurance Company*, 2008 BCSC 286 at para. 63, aff'd 2008 BCCA 492 at para. 53. Although a bad faith claim is an independent actionable wrong, it does not crystallize without a finding that the plaintiff was owed benefits under the relevant policy: *Rose* at para. 42. As a result, claims for bad faith are often bifurcated, such that the claim for benefits under the insurance policy is decided first, and then the claim for bad faith damages can be advanced: *Andreychuk* at para. 64.

[39] Where different tribunals have jurisdiction over these different aspects of the claims of an insured, the need for one tribunal to act before the other becomes essential.

[40] ICBC relied on the principles in *Andreychuk* in support of its application to stay Mr. Mohiuddin's claim.

### **Striking Out Claims**

[41] Rule 9-5(1)(a) of the *Supreme Court Civil Rules* provides:

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence as the case may be,

...

and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[42] On an application pursuant to Rule 9-5(1)(a) to strike a claim on the basis that it discloses no cause of action, the question is whether it is plain and obvious that the claims, as pleaded, cannot succeed – assuming the facts as stated in the pleading can be proved: *Shaw Cablesystems v. Concord Pacific Group Inc.*, 2009 BCSC 203 at paras. 11–12.

**Parties' Positions**

**ICBC**

[43] ICBC says that the plaintiffs' claims are pleaded in a manner that makes it difficult to discern what is actually being sought.

[44] ICBC says that:

- a) To the extent the plaintiffs' claims seek damages for injuries suffered in the motor vehicle accident, they are barred by s. 115 of the *Insurance (Vehicle) Act*, given that the accident occurred after May 1, 2021; and
- b) To the extent that the plaintiffs seek a determination of their entitlement to accident benefits, these claims must be struck as they are within the exclusive jurisdiction of the CRT pursuant to ss. 16.1(1)(a) and 133(1) of the *CRTA*.

[45] ICBC acknowledges that the plaintiffs' claims may also indicate an intention to seek damages from ICBC in respect of the manner in which it has dealt with their claims for the provision of accident benefits. It acknowledges that the plaintiffs advise that that is their intention. While not necessarily acknowledging the availability of such claims, ICBC does not argue that such claims, if properly pleaded, would be struck out under Rule 9-5(1).

[46] To the extent the plaintiffs are actually seeking to bring such claims, ICBC submits that the claims of each plaintiff are subject to different considerations.

[47] ICBC says that Mr. Mohiuddin's claim cannot proceed at this time, as his claim for accident benefits is ongoing before the CRT. ICBC says that his claim should be stayed pending the CRT's determination of his entitlement to accident benefits, as the claim will not crystallize unless and until the CRT determines that he was entitled to benefits that have been denied. ICBC submits that a stay order is authorized by s. 16.1(1)(c) of the *CRTA* and also by the provisions of ss. 8 and 10 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, which recognize the court's general

authority to stay proceedings in the interests of justice and fairness. ICBC argues that given the principles recognized in the *Andreychuk* case, and given that in the particular circumstances of this case it is the CRT that has the exclusive jurisdiction to adjudicate entitlement to accident benefits, the proceeding before the CRT should be taken to conclusion before Mr. Mohiuddin is able to advance a claim for bad faith.

[48] ICBC submits that Ms. Tiwari’s claim should be struck pursuant to Rule 9-5(1). It argues that Ms. Tiwari’s claim is not properly pleaded in the NOCC. The NOCC does not disclose a cause of action that could be brought in respect of the denial of certain benefits. In particular, the NOCC does not refer to the CRT proceedings or the specific benefits the CRT found ICBC wrongfully denied Ms. Tiwari. Those are essential material facts required to form the basis of a proper claim for damages.

[49] ICBC also argued that the two claims are not properly combined in a single action. In the Notice of Application, this position was asserted only briefly (in the final paragraph), and without referencing any supporting authority. When pressed on this submission, and with the benefit of the morning break, counsel for ICBC made further submissions, referring to Rule 22-5(2), which provides:

**Multiple parties**

- (2) Subject to subrule (6), a proceeding may be started by or against 2 or more persons in any of the following circumstances:
  - (a) if separate proceedings were brought by or against each of those persons, a common question of law or fact would arise in all the proceedings;
  - (b) a right to relief claimed in the proceedings, whether it is joint, several or alternative, is in respect of or arises out of the same transaction or series of transactions;
  - (c) the court grants leave to do so.

[50] ICBC argues that the injuries and other key facts with respect to each party are different, and thus there is no common question of law or fact. ICBC submits that the “transaction or series of transactions” underlying each claim is the dealings that each party had with ICBC – and not the Accident itself.

[51] ICBC alternatively argued that any order that did not require Ms. Tiwari to commence a separate proceeding should be without prejudice to ICBC's right to apply pursuant to Rule 22-5(6) to have the claims of each of the plaintiffs tried separately.

### **Plaintiffs**

[52] Ms. Tiwari spoke on behalf of both plaintiffs. She apologized for any disorganization in their pleadings, which were prepared without legal assistance. She said that their claims are not only about the accident benefits, but also the financial, physical and mental suffering ICBC has caused the plaintiffs over the course of two years and nine months through its refusal to authorize the various treatments and benefits recommended by their medical professionals.

[53] With respect to their decision to bring the claims within one proceeding, Ms. Tiwari noted that the plaintiffs have suffered as a family – with each of them impacted by the other's lack of or delays in recommended treatments and assistance, as they have attempted to support each other and raise their children despite the impacts of their injuries. They continue to be unable to work, living on minimal assistance, and there continue to be recommendations from medical professionals that are not being accepted by ICBC. ICBC is not funding further ADLs up front, but is asking the plaintiffs to fund those costs up front, submit receipts, and then ICBC will make inquiries of their doctors.

[54] The plaintiffs note that Mr. Mohiuddin's claims with the CRT have gone nowhere in the 38 weeks since they were initiated, which has left the family in a desperate state. They would like, given the CRT's inaction, to withdraw the case from the CRT and have this Court make appropriate orders. When I pressed Ms. Tiwari on how this Court can do that given the exclusive jurisdiction provided by s. 16, she acknowledged that this may not be possible.

[55] Ms. Tiwari also explained the difficulty they have faced as the CRT generally decides cases brought before it solely on the written materials, without an oral hearing (see, e.g., para. 6 of the decision of the Vice Chair in respect of Ms. Tiwari's



claim); however, the CRT also has strict word or character limits for the submissions of the parties, and it has been challenging for the plaintiffs to explain their circumstances and the challenges they have faced within those limitations.

[56] I confirmed with Ms. Tiwari that she is not seeking in this proceeding to challenge the decision of the CRT with respect to her claim, and noted that a challenge to a CRT decision would have to be by way of a judicial review petition.

[57] Ms. Tiwari emphasized that procedural defects should not prevent them from making claims about ICBC's conduct – in particular, that it has caused unreasonable delays, changed adjusters a number of times, and refused to follow the recommendations of medical professionals.

### **Analysis**

[58] I proceed on the basis that, as Ms. Tiwari advised in her submissions, the intent of the plaintiffs in this action is to address the manner in which they have been treated by ICBC, and not to ask this Court to step in to determine their entitlement to accident benefits.

[59] I agree with ICBC, however, that the manner in which the claim is currently framed – and in particular the overlap between the factual allegations in the NOCC and those advanced on behalf of Mr. Mohiuddin before the CRT – makes it difficult to ascertain exactly what is being advanced. That said, I acknowledge that the plaintiffs are self-represented and are doing the best they can dealing with ICBC's adjusters, ICBC's lawyers, the CRT and the courts – all without the benefit of legal advice.

### **Should Mr. Mohiuddin's claim be stayed?**

[60] In my view, ICBC is correct that Mr. Mohiuddin's claim should be stayed pending the resolution of his CRT dispute.

[61] On the understanding that what Mr. Mohiuddin seeks to advance in this court is a claim against ICBC in respect of the manner in which he has been dealt with, it

seems clear from the discussion in *Andreychuk* that a plaintiff's claim for extra-contractual damages is contingent upon the success of that plaintiff's underlying claim for breach of the contract of insurance. As a result, there should first be a determination as to whether Mr. Mohiuddin is entitled to the accident benefits that he says ICBC has wrongly denied to him. Given that the CRT has exclusive jurisdiction to make that determination, the CRT proceedings will have to be concluded before he can move forward with that claim.

**Should Ms. Tiwari's claim be struck?**

[62] In my view, Ms. Tiwari's claim as set out in the NOCC must be struck.

[63] There are two key problems with what is set out in the NOCC with respect to Ms. Tiwari. Both relate to the requirement in cases such as *Andreychuk* and *Rose*, read in combination with the CRT's exclusive jurisdiction over accident benefit claims. In my view:

- a) For those claims for wrongful denial of benefits that the CRT has already ruled on, the fact of the CRT ruling is an essential material fact underlying that claim; and
- b) To the extent Ms. Tiwari seeks to include in this action claims for wrongful denial of benefits to her on which the CRT has not yet ruled, she will have to wait until the CRT has determined her entitlement to those benefits before moving forward with the claim.

[64] As noted by ICBC's counsel, the NOCC does not refer to the outcome of Ms. Tiwari's CRT dispute – yet the CRT ruling is an essential element of any potential cause of action for extra-contractual damages against ICBC.

[65] As well, some of the benefits Ms. Tiwari refers to (e.g., caregiver benefits and transportation costs) the CRT found she was not entitled to. If she wanted to challenge the CRT ruling, she would have to do so by way of judicial review.

Otherwise, she is bound by the CRT ruling and thus unable to advance a claim for wrongful denial of those benefits.

[66] In my view, given the absence of key material facts, and the inclusion of claims that appear on their face to be improper, the appropriate order in this case is to strike Ms. Tiwari's claim with leave to amend.

**Improper joinder**

[67] ICBC says that I should make an order that would prevent Ms. Tiwari's amended claim from being included within the same proceeding as Mr. Mohiuddin's claim.

[68] I do not intend to make such an order at present. Although this submission was briefly referenced in the Notice of Application, no authority was provided in the Notice of Application and it is my view that it would be unfair to decide the issue of whether joinder is appropriate without the plaintiffs having the opportunity to consider the relevant authorities and seek advice on the underlying legal issue.

[69] Given that I am not deciding this issue, it will be open to ICBC to make application under Rule 22-5(6) at some future time should it wish to do so.

**Conclusion**

[70] I order that Mr. Mohiuddin's claim be stayed pending determination by the CRT of his entitlement to benefits.

[71] I order that Ms. Tiwari's claim be struck pursuant to Rule 9-5(1), with leave to amend.

[72] As I noted to Ms. Tiwari during the course of submissions, while the claims they seek to advance may well be available at law, given the various statutory bars and grants of exclusive jurisdiction, the plaintiffs are embarking upon litigation in what has become a very technical and complex area of law. If they are unable to

afford paid legal advice, they would be well-advised to, at the very least, consider obtaining assistance from a *pro bono* clinic before reframing their claims.

“Veenstra J.”