

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sidhu v. British Columbia (Civil Resolution Tribunal)*,
2025 BCSC 1836

Date: 20250922
Docket: S05532
Registry: Abbotsford

Between:

Iqbal Singh Sidhu

Petitioner

And

British Columbia Civil Resolution Tribunal, Insurance Corporation of British Columbia, B.A. Blacktop Ltd. and Dean Parsons

Respondents

Before: The Honourable Justice Majawa

On judicial review from: An order of the British Columbia Civil Resolution Tribunal, dated March 7, 2024 (*Sidhu v. BA Blacktop Ltd.*, 2024 BCCRT 238, VI-2023-00563).

Reasons for Judgment

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No other appearances

Places and Dates of Hearing:

Abbotsford, B.C.
June 25, 2025

Port Coquitlam, B.C.
June 26, 2025

Place and Date of Judgment:

Abbotsford, B.C.
September 22, 2025

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OVERVIEW

[1] The petitioner, Iqbal Singh Sidhu, seeks judicial review of the Civil Resolution Tribunal’s (the “Tribunal”) decision dated March 7, 2024, dismissing dispute VI-2023-005563 [*Decision*]. The *Decision* is indexed as *Sidhu v. BA Blacktop Ltd.*, 2024 BCCRT 238.

[2] The *Decision* was in respect of the petitioner’s application for dispute resolution (the “Dispute Resolution Application”) with respect to a motor vehicle accident that took place on April 12, 2021. The Dispute Resolution Application included claims relating to accident benefits, confirmation of liability, and damages arising from the accident. The petitioner also requested a determination that his injuries were not “minor injuries” under the *Insurance Vehicle Act*, R.S.B.C. 1996, c. 231, [*IVA*]. Such a determination is known as a minor injury determination or “MID”. The petitioner was self-represented, and an authorized employee of the Insurance Corporation of British Columbia (“ICBC”) acted for the respondents, B.A. Blacktop Ltd. and Dean Parsons.

[3] During the initial phase of the dispute resolution process, ICBC raised the preliminary issue of whether the petitioner’s liability, damages, and MID claim were out of time. The preliminary issue was escalated for the following question to be adjudicated: “Should [the] CRT refuse to resolve this dispute because it’s barred by the *Limitation Act* [S.B.C. 2012, c. 13]?”.

[4] The petitioner submitted the Dispute Resolution Application to the Tribunal’s online portal on April 9, 2023, and he received an automated response informing him that payment was due by May 3, 2023. The petitioner paid the associated filing fee on April 13, 2023, and this was the date assigned to the Dispute Resolution Application by the Tribunal. ICBC argued that the two-year limitation period expired on April 12, 2023, one day before the date assigned to the Dispute Resolution Application.

[5] The Tribunal member agreed with ICBC’s position and dismissed the petitioner’s claim as being out of time because the Dispute Resolution Application

was not made in the manner required by the Tribunal's rules and with payment of the applicable fees, and therefore, the dispute itself was moot: *Decision* at para. 1.

[6] On this application, the petitioner argues that the *Decision* should be set aside because the Tribunal's interpretation of the applicable legislation regarding the limitation period was patently unreasonable. Alternatively, the petitioner argues that the *Decision* should be set aside because the Tribunal failed to apply the common law rules of natural justice and procedural fairness.

[7] The petitioner and the Tribunal agree that patent unreasonableness is the appropriate standard of review in respect of the Tribunal's interpretation of the limitation period and that fairness is the standard for whether the Tribunal acted in accordance with the rules of procedural fairness and natural justice. The following issues remain to be determined:

- a) Was the Tribunal's interpretation and application of the limitation period issue patently unreasonable?
- b) Was the *Decision* made in accordance with the common law rules of procedural fairness and natural justice?

[8] I have determined that the Tribunal's interpretation and application of the limitation period were not patently unreasonable.

[9] While I do not find that the Tribunal acted in a procedurally unfair manner given the record before it, I have concluded that the matter should be remitted to the Tribunal for reconsideration. In my view, given the circumstances, it would only be fair for the petitioner to have the opportunity to make submissions on the applicability of s. 36 of the *Civil Resolution Tribunal Act*, S.B.C. 1012, c. 25 [CRTA] with respect to the Tribunal's discretion to proceed to hear the claim on the merits despite the petitioner's failure to comply with the limitation period. Given that this involves interpreting the Tribunal's home statute, and that the issue was raised for the first time during oral argument, the Tribunal should be given the opportunity to thoughtfully consider the applicability of s. 36 of its home statute at first instance.

[10] As is its usual practice, the Tribunal took no position on the merits of the judicial review. Its participation was limited to providing the Court with its view on administrative law principles applicable to judicial reviews, the Tribunal’s jurisdiction and process, the standard of review, remedy, and costs. Even though ICBC raised and relied on the limitation period issue before the Tribunal, it did not file a response to the petition and did not appear at the hearing. I do not know why ICBC proceeded this way, but it put the Tribunal in the awkward position of having to defend its decision in response to questions from the Court on more than one occasion during the hearing.

BACKGROUND

[11] On April 12, 2021, the petitioner was operating a vehicle in Langley, BC. As he was attempting to negotiate a right-hand turn, he was rear-ended by a van driven by the respondent, Mr. Parsons. The respondent, B.A. Blacktop, was the lessee of the van driven by Mr. Parsons.

[12] The petitioner reported the accident and his injuries to ICBC. ICBC took the position that the petitioner’s injuries fell under the definition of “minor injury” as defined by the *IVA* and the accompanying regulations. The petitioner disagreed with this position and submitted the Dispute Resolution Application to the Tribunal for personal injury damages and a minor injury determination on April 9, 2023.

[13] In email communication with a Tribunal staff member (the “Information Support Clerk”) on April 9, 2023, following his electronic submission of the Dispute Resolution Application, the petitioner requested information on how to pay the application fee. He had been advised to make such a request in earlier email communication with the same Information Support Clerk. On April 11, 2023, the Information Support Clerk emailed the petitioner requesting further information. The petitioner was advised that the Tribunal would proceed with entering his Dispute Resolution Application and would send him the payment link once this further information was received. The petitioner provided the requested information later that same day.

[14] On April 12, 2023, Tribunal staff sent the petitioner a request for the payment of the Tribunal’s \$150 application fee by email, using the Tribunal’s dispute resolution software (“DRS”). The DRS automatically calculates a 21-day deadline for payment of fees based on when a request for payment is sent and inserts that deadline into the request for payment email message. As a result, the DRS calculated a May 3, 2023, deadline for payment of the application fee. The relevant parts of the email message read as follows:

The [Tribunal] received your paper application for dispute resolution...

A payment is required...

...

Payment amount

\$150.00

Payment due by

May 03, 2023

If payment not received by due date

If the [Tribunal] does not receive a response by the above deadline, the [Tribunal] may decide to a) hear the dispute without your further participation; b) refuse to resolve the dispute; or c) dismiss your dispute.

[15] On April 13, 2023, the petitioner paid the application fee of \$150. The Dispute Resolution Application was recorded as being submitted on April 13, 2023, even though the Dispute Resolution Application was submitted on April 9, 2023, and the petitioner provided the additional information requested by the Information Support Clerk on April 11, 2023.

[16] On September 6, 2023, ICBC submitted responses to the petitioner’s Dispute Resolution Application on behalf of the respondents, Mr. Parsons and B.A. Blacktop (the “Dispute Response”). In the Dispute Response, ICBC raised the preliminary issue of whether the petitioner’s liability, damages, and MID claim were out of time. ICBC stated that the Dispute Resolution Application was submitted on April 13, 2023, and that the limitation period passed on April 12, 2023. Therefore, it asked the Tribunal to dismiss the petitioner’s dispute as being out of time. In the alternative, it

asked the Tribunal to dismiss the petitioner's dispute on the basis that he failed to prove that his injuries were not minor.

[17] On November 7, 2023, the Tribunal emailed the parties about the limitation period issue raised by ICBC. The email advised that if the respondents chose to pursue a limitation defence, the dispute would be escalated to a Tribunal member for a preliminary decision to be made. Later that same day, ICBC responded on behalf of the respondents and advised that they wished to pursue the limitation defence.

[18] Between December 6, 2023, and February 23, 2024, the Tribunal sought and received evidence and submissions from the parties in respect of the limitation period issue.

The Decision

[19] Former Tribunal Member and Vice Chair of Escalations, Sherelle Goodwin (the "Vice Chair") adjudicated the limitation period issue. On March 7, 2024, the Vice Chair issued the *Decision*.

[20] The Vice Chair considered both the *CRTA* and the *Limitation Act*. The Vice Chair found that s. 13.1 of the *CRTA* says the basic limitation period under the *Limitation Act* (which all parties agree is two years, as per s. 6 of the *Limitation Act*) does not run after an applicant requests dispute resolution under s. 4 of the *CRTA*. Section 4(2) of the *CRTA* says a request for resolution must be made in the manner required under the Tribunal's rules, and with payment of any applicable fees: *Decision* at para. 19. The Vice Chair noted that the petitioner paid the fees on April 13, 2023, one day after the limitation period expired: *Decision* at paras. 17, 20.

[21] The Vice Chair took the Tribunal's email dated April 12, 2023, requesting payment of the fees, to indicate that payment was due by May 3, 2023. The Vice Chair understood the petitioner's argument to be that he had until May 3, 2023, to pay the application fee: *Decision* at para. 23. However, the Vice Chair found that the email did not refer to any limitation period or otherwise note that the petitioner's application was complete at that time. The Vice Chair stated that a party's error or

ignorance of the law does not postpone the running of limitation periods. Having found that the limitation period had expired, the Vice Chair dismissed the damages claim as being out of time: *Decision* at para. 24.

[22] At para. 25 of the *Decision*, the Vice Chair summarized her conclusion:

On balance, I find the applicant did not meet the CRTA section 4(2) requirements of applying for dispute resolution **and** paying the required fee within the 2-year limitation period, which expired on April 12, 2023. So, I dismiss the applicant’s claim for personal injury damages as out of time.

[Emphasis in original.]

THE STANDARD OF REVIEW

[23] There is no dispute as to the appropriate standard of review in this case. Pursuant to s. 56.7(2)(a) of the *CRTA*, the patently unreasonable standard of review applies to findings of fact or law or to an exercise of discretion with respect to the merits of the *Decision*.

[24] The patently unreasonable standard of review is the most deferential standard of review: *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10, at paras. 129 –130, leave to appeal to SCC ref’d, 2022 CarswellBC 2007, 2022 CanLII 110523 (S.C.C.) [*College of Physicians*]. In *Macdonald v. The Owners, EPS 522*, 2024 BCCA 52 at para. 9, the Court of Appeal recently reiterated the nature of a review under this standard:

The standard of review of patent unreasonableness is highly deferential. A patently unreasonable decision is one that is “openly, clearly, evidently unreasonable” and “almost borders on the absurd” ... To be considered patently unreasonable, the decision must be so flawed that no amount of curial deference can justify letting it stand ...

[Citations omitted.]

[25] Indeed, a reviewing court may disagree or consider certain aspects of an administrative decision-maker’s reasoning to be flawed. However, this does not mean the decision must be set aside under the patent unreasonableness standard. In *College of Physicians*, the five-member division put it this way, at para. 129:

... the court is not to ask itself whether it is persuaded by the tribunal’s rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational ... Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.

[26] The parties also agree that questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all the circumstances, the Tribunal acted fairly: *CRTA*, s. 56.7(2)(b).

THE TRIBUNAL’S INTERPRETATION OF THE LIMITATION PERIOD IS NOT PATENTLY UNREASONABLE

[27] In the *Decision*, the Vice Chair determined that the petitioner was out of time because s. 4(2) of the *CRTA* requires that a request for the Tribunal to resolve a dispute must be made by applying for dispute resolution and by paying the required fee within the two-year limitation period: *Decision* at para. 25. The relevant parts of s. 4 of the *CRTA* read:

4 (1) A person who has a claim that is within the jurisdiction of the tribunal may, in accordance with this Part, make a request to the tribunal asking the tribunal to resolve the claim.

...

(2) A request for tribunal resolution must be made

(a) in a manner required or authorized under the rules, and

(b) with payment of any applicable fees for the case management phase and the tribunal hearing phase

[Emphasis added.]

[28] In coming to this conclusion, the Vice Chair considered s. 13 of the *CRTA*, which provides that the *Limitation Act* applies to claims made under the *CRTA*: *Decision* at para. 13. Given that s. 1 of the *Limitation Act* defines “claim” as a claim to remedy an injury, loss, or damage that occurred as a result of an act or omission, the Vice Chair held that the petitioner’s Dispute Resolution Application is a “claim” because it was meant to remedy the petitioner’s alleged injuries, income loss, and out of pocket expenses. Consequently, the Vice Chair determined that the two-year

limitation period applies to the Dispute Resolution Application: *Decision* at paras. 14 –15.

[29] With reference to s. 8 of the *Limitation Act*, the Vice Chair concluded that the petitioner discovered his claim on April 12, 2021, which was the date the accident occurred. Consequently, the Vice Chair concluded that basic two-year limitation period provided for in s. 6 of the *Limitation Act* meant that the petitioner’s damages claim expired on April 12, 2023: *Decision* at paras. 16 –17. Therefore, the petitioner should have commenced his claim on or before April 12, 2023.

[30] The petitioner does not take issue with the Tribunal’s conclusion that the two-year limitation period applies and that it operates such that it expired on April 12, 2023. Instead, the petitioner takes issue with the Vice Chair’s conclusion that the *Limitation Act* and the *CRTA* require that the Dispute Resolution Application be submitted, and that the application fee be paid, in order for the petitioner’s claim to have been commenced for the purposes of the *Limitation Act*. The petitioner says that this interpretation is patently unreasonable.

[31] The Vice Chair reasoned that s. 13.1 of the *CRTA* provides that the basic limitation period under the *Limitation Act* does not run after an applicant requests dispute resolution under s. 4 of the *CRTA*: *Decision* at para. 19. Sections 13 and 13.1 read:

Limitation period

13 The *Limitation Act* applies to a claim, and, for that purpose,

(a) a reference to a claim in that Act is deemed to include a claim under this Act, and

(b) a reference to a court proceeding in that Act is deemed to include a tribunal proceeding.

Limitation period does not run after request for tribunal resolution

13.1 The basic limitation period and the ultimate limitation period under the *Limitation Act* that are applicable to a claim do not run after a request is made under section 4 [*asking the tribunal to resolve a claim*] of this Act for the tribunal to resolve the claim.

[32] The Vice Chair further reasoned that s. 4(2) of the *CRTA* provides that a request for resolution must be made in the manner required under the Tribunal’s rules, and with payment of any applicable fees. Given that it was essentially undisputed that the petitioner did not pay the applicable fee until April 13, 2023, the Vice Chair determined that the petitioner had missed the limitation period by one day: *Decision*, at paras. 19, 25.

[33] In essence, the Vice Chair reasoned that the commencement of a claim, for the purposes of the basic limitation period under the *Limitation Act*, depends on whether the *CRTA*’s requirements to perfect a claim under s. 4(2) are met. I cannot say that the Vice Chair’s reasoning is openly, clearly, or evidently unreasonable or that it almost borders on the absurd. There is, in my view, a tenable line of analysis that supports the Vice Chair’s *Decision* such that it is not clearly irrational.

[34] The petitioner argues that it is patently unreasonable to conclude that the requirements of s. 4(2) of the *CRTA* operate to require the Dispute Resolution Application form to be submitted and the fee to be paid for the purposes of commencing a claim under the *Limitation Act*. The petitioner submits that the requirements outlined in s. 4 of the *CRTA* only serve to limit when the tribunal may resolve a claim: i.e., the Tribunal must not resolve a claim if the applicable fees have not been paid. The petitioner says that the addition of s. 13.1 of the *CRTA* served to ensure that a claimant’s rights to continue an action in Supreme Court were not lost due to a limitation period, if it was found that the Tribunal did not have jurisdiction over the dispute. Indeed, the Tribunal does not dispute this characterization of s. 13.1; it submits that the addition of ss. 13.1–13.4 clarified how limitation periods stop running and apply when seeking to continue claims in other courts.

[35] I agree with the Tribunal that the amendments that added ss. 13.1 to 13.4 of the *CRTA* did not change or affect s. 4 of the *CRTA*. While s. 4(2) does not explicitly use the words “commence a claim”, the Vice Chair’s conclusion – that the elements of perfecting a request for resolution from the Tribunal under s. 4(2) are essentially equivalent to the commencement of a claim – is understandable. Thus, in my view, it

is not patently unreasonable to conclude that the petitioner's claim had not been commenced for the purposes of s. 6 of the *Limitation Act* until the Dispute Resolution Application had been submitted and the applicable fee had been paid. While it is unfortunate that the Tribunal's systems permit an applicant to submit a request for dispute resolution independent of paying the fee, this does not render the Vice Chair's reasoning patently unreasonable.

PROCEDURAL FAIRNESS

[36] In its petition, the petitioner puts forward three other arguments in support of its application for judicial review:

- a) The Tribunal erred by not applying its mandate to provide resolution services in a manner that is informal and flexible.
- b) The Tribunal erred in not finding that the limitation period was extended due to the communication from the Tribunal.
- c) The Tribunal failed to apply the common law rules of natural justice and procedural fairness.

[37] In oral argument, the petitioner focussed on the third argument: that the Tribunal failed to apply the common law rules of natural justice and procedural fairness. As I understand the petitioner's argument on this ground, the first alleged error will be better considered by the Tribunal in determining whether s. 36 of the *CRTA* applies, as will be discussed later in these Reasons. The second alleged error identified above is essentially subsumed within the petitioner's procedural fairness argument.

Relevant Law

[38] Whether the Tribunal applied the common law rules of natural justice and procedural fairness while evaluating the petitioner's Dispute Resolution Application with respect to the limitation period depends on whether, in all the circumstances, the Tribunal acted fairly: *CRTA*, s. 56.8(5). This question applies regardless of

whether the Tribunal is considered to be an expert in relation to the decision: *CRTA*, s. 56.7(2)(b). The duty to act fairly is described by the Court of Appeal in *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at para. 52:

I agree ... that the standard of review applicable to issues of procedural fairness is best described as simply a standard of “fairness”. A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal’s own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal’s choice of procedures.

[39] The specific procedural requirements that the duty of fairness imposes are determined with reference to all of the circumstances: *Canada v. Vavilov*, 2019 SCC 65 at para. 77. As the Supreme Court held in *Vavilov*, what are known as the *Baker* factors continue to inform the content of the duty of fairness: a) the nature of the decision being made and the process followed in making it; b) the nature of the statutory scheme; c) the importance of the decision to the individual affected; d) the legitimate expectation of the person challenging the decision; and e) the choices of procedure made by the administrative decision maker itself. Several cases have demonstrated the applicability of the *Baker* factors to Tribunal decisions: see *Downing v. Strata Plan VR2356*, 2022 BCSC 590 at para. 97, aff’d 2023 BCCA 100, and *1028677 B.C. Ltd. v. The Owners, Strata Plan LMS 1083*, 2024 BCSC 578 at paras. 15–55. In both of these cases, the court evaluated the facts according to the relevant *Baker* factors in order to determine the level of procedural fairness which was owed by the Tribunal in the circumstances.

[40] In *Downing v Strata Plan VR2356*, 2023 BCCA 100 at para. 68 [*Downing*], Justice Willcock opined that the duty of fairness is focussed on the procedures undertaken by the administrative decision maker:

Fairness is a concept fundamentally concerned with appropriate procedures. The key question for a reviewing court is ‘whether, considering all the

circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly' ...”

[41] As Justice Milman stated in *Zysman v. Sims*, 2024 BCSC 1487 at para. 43, with reference to para. 36 of *Downing*, it has been held that the level of procedural fairness owed by this Tribunal is relatively high given its mandate to resolve civil disputes and the fact that it is making decisions that are judicial in nature:

[36] Here, the function of the decision-making body, the CRT, is to resolve civil disputes. Given that the tribunal's determinations resemble judicial decision making, procedural protections closer to the trial model will be required by the duty of fairness ... The reviewing judge recognized that fact when she concluded that a relatively high level of procedural fairness was required.

Analysis

[42] The petitioner's arguments with respect to procedural fairness are focussed on two of the *Baker* factors: the nature of the statutory scheme and the petitioner's legitimate expectations.

[43] The petitioner argues that the Tribunal should have been more flexible with respect to the application of the limitation period. This argument considers the Tribunal's mandate and statutory scheme, which seek to provide resolution services in an informal and flexible manner which accommodates “the diversity of circumstances of the persons using the services of the tribunal”: *CRTA*, s. 2(2)(d). The petitioner also submits that because the Tribunal's services are designed for self-represented litigants, the Tribunal should proceed in a manner that appreciates that these individuals may inadvertently fail to comply with certain provisions of the *CRTA*. The petitioner submits that the Tribunal's decision to dismiss the claim for being out of time contradicts its own mandate.

[44] The petitioner also argues that he had a legitimate expectation that his claim would be accepted for resolution if he paid the application fee by May 3, 2023, which the Tribunal's email referred to as being the deadline for payment. He says that the Tribunal did not act fairly when it represented that he had until May 3, 2023, to pay,

but then dismissed his dispute for not paying by April 12, 2023 (recall that the petitioner paid the fee on April 13, 2023).

[45] The problem with the petitioner’s arguments as described above is that they seek a substantive resolution, rather than a procedural one. As mentioned, the duty of procedural fairness is focussed on the procedures undertaken by the administrative decision maker. In particular, the doctrine of legitimate expectations gives rise to procedural, not substantive rights: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699 at para. 26.

[46] The petitioner’s proposed resolution of the alleged errors is to allow the claim to go forward because, in essence, it would not be fair for the Tribunal to stand on the strict limitation date in the circumstances. While I sympathize with the petitioner’s situation, he is claiming a substantive right as the basis for the breach of procedural fairness and natural justice, not a procedural right. The petitioner was afforded the opportunity to provide the Tribunal with submissions and evidence as to the application fee deadline that the Tribunal indicated to him. I do not see anything unfair in the process employed in that regard.

[47] However, that is not the end of the matter. In oral submissions the petitioner raised, for the first time, an argument that the Tribunal did not properly exercise the discretion afforded to it by s. 36 of the *CRTA*. On its face, s. 36 provides the Tribunal with discretion to proceed to either resolve a dispute, dismiss a claim, or refuse to resolve the claim or dispute where an applicant fails to comply with provisions of the *CRTA*:

Referral to tribunal for non-compliance

36 (1) This section applies if a party to a dispute fails to comply with any of the following:

- (a) this Act or the regulations;
- (b) the rules in relation to the case management phase for the dispute, including any time limits specified for taking actions;
- (c) an order of the tribunal made during the case management phase.

(2) The case manager may, after giving notice to the non-compliant party, refer the dispute to the tribunal for resolution.

- (3) If a dispute is referred to the tribunal under this section, the tribunal may
- (a) proceed to hear the dispute in accordance with any applicable rules,
 - (b) make an order dismissing a claim in the dispute that is made by the non-compliant party, or
 - (c) refuse to resolve a claim of the non-compliant party or refuse to resolve the dispute.

[Emphasis added.]

[48] As I understand the petitioner’s argument on this point, even if the petitioner was out of time in commencing its claim, the Tribunal could have used the discretion afforded to it by s. 36(3) to proceed with hearing the merits of the petitioner’s Dispute Resolution Application. The petitioner is critical that the Tribunal did not provide any reasons for its decision not to exercise its discretion. This is also closely related to the petitioner’s argument that the Tribunal acted unfairly, or was patently unreasonable, in failing to properly apply its mandate to provide resolution services in a manner that is informal and flexible and that considers the circumstances of self-represented litigants.

[49] Since this argument was not referred to in the petition, the Tribunal was understandably unprepared to provide a comprehensive response. The Tribunal did note that there was no mention of s. 36 in the *Decision* and queried as to whether the *Decision* was made pursuant to s. 36 or perhaps pursuant to some other section of the *CRTA*. To the extent that the Tribunal responded substantively to this argument, it suggested that the discretion accorded to the Tribunal under s. 36 is procedural and does not extend to the application or waiver of the limitation period, which is mandatory.

[50] It is not clear to me whether the *Decision* was made pursuant to s. 36 or some other section. The Tribunal did not identify the *CRTA* section that the *Decision* was made under if not s. 36. It appears to me that during the case management phase of the dispute, the case manager referred the limitation issue to a Tribunal member for resolution. It is arguable that the Tribunal appears to have engaged in

the procedure described in s. 36(1) and (2); however, that is for the Tribunal to consider.

[51] It has already been held that the Tribunal owes a relatively high level of procedural fairness, given its mandate to resolve civil disputes and the judicial nature of its decisions. In this case, I emphasize the importance of the decision to the petitioner and the nature of the statutory scheme in support of the extent of the duty. Given the high degree of procedural fairness that the petitioner is owed in the circumstances, it is my view that the common law rules of procedural fairness and natural justice require that the Tribunal give thorough consideration as to whether s. 36 applies. If it does apply, then the Tribunal must consider whether the discretion afforded under that section extends to permitting a dispute to proceed despite the petitioner having missed the limitation period by one day.

[52] If s. 36 does provide the Tribunal with the relevant discretionary power to permit the petitioner's Dispute Resolution Application to be heard on the merits, then consideration should be given to the information the Tribunal provided to the petitioner about paying the application fee, and to any other factors relevant to the exercise of the Tribunal's discretion.

CONCLUSION AND DISPOSITION

[53] I have concluded that the Tribunal's interpretation of the limitation period and its conclusion that the petitioner commenced his claim one day after the limitation period is not patently unreasonable.

[54] However, given the high degree of procedural fairness owed to the petitioner by the Tribunal, the common law rules of procedural fairness and natural justice require that the Tribunal consider whether the *Decision* was made under s. 36 of the *CRTA*, and if so, if the Tribunal has the discretion to permit the claim to proceed on its merits despite the petitioner's non-compliance with s. 4(2) of the *CRTA* before the limitation period expired.

[55] Accordingly, the *Decision* is set aside and the matter is remitted for reconsideration of the applicability of s. 36 of the *CRTA*. It will be for the Tribunal to decide how to conduct this reconsideration according to its own rules and procedures. However, to ensure procedural fairness, the petitioner should have the opportunity to make submissions to the Tribunal on whether s. 36 applies, and if so, on how the Tribunal should exercise its discretion.

[56] While the Tribunal was put in the awkward position of having to respond to the Court's questions with respect to the merits of the application because ICBC inexplicably chose not to participate, its participation was mainly focussed on assisting the Court in respect of background information and the applicable legal principles. Moreover, the matter is being remitted for reconsideration in respect of an issue that was only raised for the first time during oral submissions. In these circumstances, I see no reason to depart from the customary order that no costs award will be made against the Tribunal.

“Majawa J.”