IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yates v. British Columbia (Civil Resolution Tribunal),* 2026 BCSC 768

Date: 20260409
Docket: S-24020
Registry: Nelson

Between:

Christopher Yates

Petitioner

And

Civil Resolution Tribunal, Insurance Corporation of British Columba and Attorney General of British Columbia

Respondents

Before: The Honourable Madam Justice L.M. Lyster
In Chambers

Oral Reasons for Judgment

Appearing on his own behalf:	C. Yates
Counsel for the Respondent Civil Resolution Tribunal appearing by videoconference:	E. McCullum
Counsel for the Respondent Insurance Corporation of British Columbia appearing by videoconference:	R.K. Buchanan
For the Respondent Attorney General of British Columbia:	No appearance
Place and Date of Hearing:	Nelson, B.C. March 24 & 25, 2026
Place and Date of Judgment:	Nelson, B.C. April 9, 2026

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Introduction

[1] **THE COURT:** On February 27, 2026, Christopher Yates filed a petition for judicial review ("JR") and an application seeking, among other things, an interim stay of proceedings before the Civil Resolution Tribunal ("CRT") regarding a dispute between Mr. Yates and the Insurance Corporation of British Columbia ("ICBC").

[2] On March 2, 2026, I granted Mr. Yates' *ex parte* application for an interim stay of proceedings. I adjourned the hearing of Mr. Yates' application, which I will describe in further detail, and made orders for ICBC and CRT to be served and to file and serve their response materials. I ordered that it would be for the judge hearing the application to determine whether the stay would continue.

[3] On March 13, 2026, ICBC filed an application to set aside the stay.

[4] By order of Justice Dley, the two applications were ordered to be heard together. They ultimately came on for hearing before me on March 24 and 25, 2026. ICBC chose not to pursue its application to set aside the stay as it was effectively duplicative in substance with Mr. Yates' application. These are my oral reasons with respect to the applications to set aside or to continue the stay.

[5] These applications are brought within petition proceedings initiated by the petition filed by Mr. Yates on February 27, 2026. In the petition Mr. Yates seeks:

- First, an order in the nature of *certiorari* quashing the CRT's preliminary decision (I will note it is not clear which preliminary decision is intended, as

there are two, as I shall describe in more detail) and all post-September 11, 2025 procedural interventions;

- Second, he seeks an order in the nature of prohibition, preventing the CRT from drawing an adverse inference from his refusal to attend what he calls an "extra-jurisdictional, post-closure IME based on a deficient and biased record";

- Third, he seeks an order in the nature of *mandamus* compelling the immediate reinstatement of interim Income Replacement Benefits ("IRB");

- Fourth, he seeks an interim stay (which I granted on an interim basis on March 2), of all CRT proceedings pending his JR;

- Fifth, he seeks a declaration that the CRT breached the honour of the Crown and its statutory duties under the *Declaration on the Rights of Indigenous Peoples Act,* S.B.C. 2019, c. 44 ("*DRIPA*") and the *United Nations Declaration on the Rights of Indigenous Peoples*, S.C. 2021, c. 14 ("*UNDRIP*"); and

- Sixth, he seeks costs.

[6] The relief sought in Mr. Yates' current application largely mirrors the relief sought in the petition. He seeks an interim stay of CRT proceedings pending the final determination of the JR. He seeks an order in the nature of *mandamus* for the immediate reinstatement of IRB benefits. He seeks an order in the nature of prohibition preventing the CRT from drawing an adverse inference. Finally, he seeks the costs of the application.

Factual and Procedural Background

[7] This matter has a lengthy procedural history between Mr. Yates and ICBC and before the CRT. For the purposes of this decision, I will not summarize all of that history, although it was fully laid out in the course of submissions before me. I will highlight the most important aspects for the purposes of the applications before the

court, remembering that what is sought are interlocutory orders from the court, pending the hearing of the petition for JR, and that the petition for JR is not itself before the court for a decision at this time.

[8] I would emphasize that in setting out this factual and procedural background, I am not making any findings of fact.

[9] Mr. Yates is a Métis person. He and his family live on a farm in Vallican, near Winlaw, British Columbia. Mr. Yates participates in traditional hunting, trapping and tanning activities, as well as farming activities, by which he provides for his family, as well as others, including community elders. He is a leader in his Indigenous community and teaches children about traditional practices.

[10] Mr. Yates and his family were involved in a motor vehicle accident (“MVA”) on October 21, 2022. He applied for and received benefits from ICBC in relation to that MVA. Those benefits were described in a decision letter from ICBC dated August 18, 2023. They were also described in a letter from ICBC's Fair Practices Office, dated August 25, 2023. In brief, ICBC recognized Mr. Yates’ cultural and farming practices as being equivalent to employment activities and determined that he was entitled to IRB on that basis.

[11] At about the same time that ICBC determined that Mr. Yates was entitled to IRB, it raised with him its intention to require him to attend an in-person independent medical examination (“IME”), with a neurosurgeon. As explained in ICBC's August 9, 2023 email, ICBC stated it wanted a full picture of his injuries, functional limitations and recommended treatments. It also referred to a pre-existing condition referenced in Mr. Yates’ clinical records and the need to understand the cause of his disability. The email states that all costs of travel and accommodation for the IME would be covered. In an August 24, 2023 email, more information was provided, including the scheduled date of the IME, being October 4, 2023, and that ICBC would pay the costs of both Mr. Yates and another individual of his choosing travelling to attend the IME.

[12] Mr. Yates did not agree that an IME was appropriate. He raised concerns about travelling to the IME, given his mobility problems at the time, and the need to ensure that someone would be available to look after his five children. He indicated that he had already provided sufficient medical evidence to establish his entitlement to benefits. He alleged that ICBC was engaging in bad faith adjudication and breaches of both the Constitution and *UNDRIP*.

[13] On September 22, 2023, ICBC wrote Mr. Yates regarding the IME and related authorizations for the release of medical information. In short, they told him that if they did not receive the authorizations or if he did not attend the IME, his benefits may be suspended. Mr. Yates did not attend the October 4, 2023 IME. On November 20, 2023, ICBC wrote Mr. Yates. They told him his benefits were suspended immediately, and would be cancelled in 14 days. Further correspondence ensued but Mr. Yates' benefits were indeed cancelled as of on or about December 4, 2023.

[14] On January 8, 2024, Mr. Yates filed a notice of civil claim ("NOCC") in this court, alleging, among other things, bad faith adjudication and a declaration that ICBC and the provincial government had breached his constitutional rights as an Indigenous person. He sought a number of orders, including IRB benefits until the case was settled. ICBC filed an application to dismiss or stay the NOCC. In reasons released December 20, 2024, Justice Ball dismissed part of the NOCC claim being, as I understand it, the part of the NOCC making claims about Mr. Yates' entitlement to benefits as being within the exclusive jurisdiction of the CRT; the remainder being, as I understand it, the part of the NOCC claim making claims under s. 35 of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Constitution Act*]. Breach of privacy, bad faith adjudication and a claim under s. 7 of the *Charter* were stayed, pending Mr. Yates making appropriate amendments.

[15] It would appear that the underlying dispute essentially lay in limbo between the hearing in April 2024 and Ball J.'s decision in December 2024.

[16] On January 14, 2025, Mr. Yates applied for dispute resolution with the CRT.

[17] Mr. Yates' application proceeded before the CRT. There was an initial facilitation phase, which I understand to be without prejudice. When the parties did not settle, it passed to what the CRT calls the Tribunal Decision Plan ("TDP") phase on July 21, 2025.

[18] As requested, Mr. Yates uploaded his arguments and evidence for the TDP on August 21, 2025. On September 5, 2025, ICBC was given until September 9, 2025 to upload their arguments and evidence. The CRT says that this short timeframe was a mistake. On September 10, 2025, ICBC requested and obtained an extension to October 13, 2025. ICBC did not uploaded their materials by that date, which was a statutory holiday, which means that their deadline was actually the next day, October 14, 2025. On October 14, 2025, ICBC asked the CRT for an order requiring Mr. Yates to produce documents and for an order requiring him to confirm his attendance at an IME that ICBC had scheduled outside of the CRT's process for requiring IMEs. In the alternative, ICBC sought an order compelling Mr. Yates to attend that IME. ICBC also sought an order that the dispute be paused pending the delivery of the IME report. Mr. Yates objected to attending the IME.

[19] The CRT paused the underlying dispute pending a decision on ICBC's application.

[20] On November 19, 2025, Vice Chair Gardner rendered the CRT's decision on ICBC's application ("PD#1). At paragraph 15, she held that even if the *CRTA*, s. 61, gives the CRT the authority to require Mr. Yates to attend an IME sought by ICBC under the *Enhanced Accident Benefits Regulation* ("*EABR*"), s. 60, she declined to do so. She stated that it is the applicant's burden to prove his entitlement to accident benefits. At paragraph 17, she stated that if Mr. Yates declines to attend the IME:

> … he runs the risk that the tribunal member will make an adverse inference against him, or a finding that the applicant has otherwise not proved his claims. In other words, it may be in the applicant's interests to participate in the IME process.

[21] This statement is the basis for the relief sought by Mr. Yates before this court prohibiting the CRT from making an adverse inference against him. The Vice Chair

went on to make an order requiring Mr. Yates to confirm his attendance at the IME by a set date. She also ordered Mr. Yates to produce the medical documentation sought by ICBC and execute authorizations for medical providers to provide certain other medical documents. Mr. Yates takes no issue before this court with respect to this or any other aspect of the PD#1 beyond the adverse inference issue.

[22] Mr. Yates did not attend the ICBC IME.

[23] On November 20, 2025, Mr. Yates requested an IME within the CRT process. He submitted that an IME was necessary because the evidence raises complex issues of causation, functional limitation and the permanence of his injuries. He submitted that resolving the conflicts in the neurological opinions required an independent specialist to provide objective findings. ICBC agreed that an IME was required, but submitted that in-person IME was appropriate.

[24] On December 6, 2025, Mr. Yates sent an email requesting that the Vice Chair make several corrections to PD#1. The Vice Chair responded to that request in an email forwarded to Mr. Yates on December 16, 2025. She was not satisfied that she misstated or misinterpreted any evidence such that it would constitute an inadvertent error as required under the *CRTA*, s. 64(b), to amend a decision. She stated that for clarity she did not make any findings about medical causation or credibility, and that in any event her decision would not be binding on the tribunal member who is assigned to make the final decision. She therefore found that the fairness of the process was not in jeopardy.

[25] On January 16, 2026, tribunal member Binnie provided her decision on Mr. Yates' application for an IME ("PD#2). At paragraph 18, the tribunal member noted that the parties agreed an IME was necessary but disagreed about whether it should be in person. She agreed that an IME was necessary, but not necessarily an in-person IME. She ordered that the independent health professional ("IHP"), review Mr. Yates' medical records, and if they determine that an in-person IME is necessary, and the parties are unable to agree, then they may request further directions from the CRT. The tribunal member stated she would prepare the

necessary terms of reference and invited the parties to submit any questions they wanted the IHP to answer. The tribunal member seized herself of the dispute.

[26] On February 6, 2026, Mr. Yates emailed the CRT to request the interim reinstatement of his benefits. On February 10, 2026, the CRT forwarded the tribunal member's response to his request. She responded to his concerns about delay, and found that both parties were responsible for some of the delay to date. She found that she did not have the necessary evidence to make a decision about the interim reinstatement of Mr. Yates' benefits. She therefore declined Mr. Yates' request "at this time".

[27] On February 26, 2026, Mr. Yates emailed the CRT to "formally record a procedural objection regarding" the IME terms of reference. He asserted that the CRT had intentionally excluded key medical evidence, in particular Dr. Heran's 2024 in-person report, among others. He stated that the CRT was coercing his participation in an IME built on a deficient record. He demanded that the CRT respond by 2:00 p.m. that same day (a Friday), to avoid an interim stay of proceedings in B.C. Supreme Court. Later that day, Mr. Yates says at 8:00 p.m., the CRT manager responded saying that he would respond to the email by end of day Monday.

[28] The following Monday, March 2, 2026, Mr. Yates appeared before me and obtained the *ex parte* interim stay. He sent an email to a number of people at the CRT, including the manager, at 12:35 p.m. This would have been immediately after the stay was granted in court. In his email, Mr. Yates advised them that he had just received the stay, and would be serving them with the stay and related documents later that day. Mr. Yates did so by email that day.

[29] Also on March 2, 2026, at 1:11 p.m., the CRT manager responded to Mr. Yates' February 26, 2026 email. He explained that he had discovered that four documents Mr. Yates had submitted were not before the tribunal member when she made PD#2 due to an error by CRT staff. He explained that he forwarded the four documents, which were Dr. Heran's report, the ICBC letter dated August 18, 2023,

the ICBC letter dated August 25, 2023, and an October 2023 document from Pauly Physiotherapy, to the tribunal member the previous Friday. She confirmed that they did not change her decision regarding Mr. Yates' IME request. She directed that Dr. Heran's letter and the Pauly Physiotherapy document be added to the Terms of Reference for the IME, and held that the two ICBC letters were not medically relevant and would not be provided to the IHP.

[30] My stay order required the CRT and ICBC to file and serve any response materials to Mr. Yates' application by 4:00 p.m. on March 6, 2026. Mr. Yates says that they served unfiled copies at 4:09 p.m. and filed copies at 4:16 and 4:27 p.m. on March 6, 2026. On this basis, he submits that both respondents are in breach of my order and that their materials should be struck. The court file shows that both respondents filed their materials on March 6, 2026 as ordered. For the purposes of this decision, I will assume that neither respondent served filed materials until the times alleged by Mr. Yates. A delay in serving filed materials of less than a half an hour is inconsequential and has caused Mr. Yates no prejudice. I decline to grant the order sought by Mr. Yates pursuant to Supreme Court Rule 22-7(5)(g) to treat this matter as an undefended proceeding and to strike the late served materials under Rule 22-7(2).

Analysis

Stay

[31] ICBC seeks an order that the stay be dissolved or lifted. Mr. Yates seeks an order that the interim stay remain in place pending the court's decision on his JR application.

[32] In deciding whether to grant a stay, the court applies the tri-partite test for whether to grant an interlocutory injunction set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC).

[33] The first question is whether there is a serious issue to be tried. This is generally a low bar, which requires the applicant to show that the issues raised in the petition are not frivolous or vexatious.

[34] ICBC argues that Mr. Yates cannot establish that his petition shows a serious question to be tried because it is premature and will therefore ultimately be dismissed.

[35] I agree with ICBC that the petition is likely to be dismissed on the basis of prematurity. The doctrine of prematurity was recently discussed in *Chu v. British Columbia (Civil Resolution Tribunal)*, 2025 BCSC 2117, at paras. 13-14 where the court stated:

> [13] Dealing first with prematurity, the applicable principles are set out in *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner*), 2020 BCCA 221, as cited in *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174:
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> > [63] The prematurity principle was concisely summarized by Justice Fenlon in *Diaz-Rodriguez*:
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> > > [29] Generally, a court will not hear a judicial review petition before a tribunal has rendered its final decision: *ICBC v. Yuan*, 2009 BCCA 279 at para. 24. The prematurity principle is aimed at letting the tribunal get on with its work, and preventing fragmented and piecemeal proceedings with all the attendant costs and delays associated with premature forays into court. The principle is also aimed at avoiding the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may ultimately succeed at the end of the administrative process.
>
> [14] The decision whether to intervene is discretionary: *Diaz-Rodriguez* at para. 33. The factors to consider in determining whether to exercise the court's discretion to intervene and hear a judicial review are set out in *Chu*:
>
> > [66] Factors to consider in determining whether the Court’s discretion to intervene early, which have been described under the rubric of “special” or “exceptional circumstances”, may include hardship or prejudice to the applicant; waste of resources; delay if judicial review proceeds; fragmentation of proceedings; the strength of the case; and the statutory context: *Thielmann v. Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2020 MBCA 8

> at para. 50; *ICBC v. Yuan*, 2009 BCCA 279 [*Yua*n] at paras. 23–24. The analysis is flexible and does not necessarily turn on a single factor: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 [*Hill*] at para. 36; *Thielmann* at para. 49.

[36] The CRT has not issued a final decision in this matter. It has issued two preliminary decisions. I find that the CRT should be permitted to get on with its work and to complete its work, that work being to decide the underlying dispute between ICBC and Mr. Yates.

[37] Mr. Yates alleges that the CRT is biased against him and that it will ultimately decide against him, thus putting him into the exceptional circumstances exception to the doctrine of prematurity. He says the CRT has been biased against him at least since September 2025 when it granted ICBC extensions to file its materials after the time limit for doing so had passed, something he refers to as "realiving a dead case". He also refers, in this connection, to the Vice Chair's refusal to correct PD#1 and the CRT's failure to ensure that the tribunal member making the PD#2 had all relevant medical documentation before her before she made her decision. He submits that information was being suppressed because the CRT was biased against him.

[38] In *Hemminger v. Law Society of British Columbia*, 2023 BCCA 36, at para. 11, the Court of Appeal cited the following passage from the decision of the Federal Court of Appeal in *Canada (Border Services Agency) v. C.B. Powell Ltd.* 2010 FCA 61:

> Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the "exceptional circumstances" exception. Little need be said about this exception, as the parties in this appeal did not contend that there were any exceptional circumstances permitting early recourse to the courts. Suffice to say, the authorities show that very few circumstances qualify as "exceptional" and the threshold for exceptionality is high: see, generally, D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (looseleaf) (Toronto: Canvasback Publishing, 2007) at 3:2200, 3:2300 and 3:4000 and David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at pages 485-494. Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision-makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional

> circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted: see *Harelkin, supra*; *Okwuobi, supra* at paragraphs 38-55; *University of Toronto v. C.U.E.W, Local 2* (1988), 52 D.L.R. (4th) 128 (Ont. Div. Ct.). As I shall soon demonstrate, the presence of so-called jurisdictional issues is not an exceptional circumstance justifying early recourse to courts. [At para. 33; emphasis added.]

[39] Neither the allegation of bias nor Mr. Yates' allegations that his rights as an Indigenous person have been breached bring this case into the exceptional circumstances category that would justify the court intervening in the CRT's processes before they have been allowed to run their course. To do so would be inefficient and contrary to the legislature's intention to entrust disputes of this kind to the CRT for decision.

[40] The second branch of the *RJR* test requires the court to consider whether refusal to grant a stay could so adversely affect the petitioner's interests that the harm could not be remedied if the eventual decision does not accord with the results of the interlocutory application. In other words, would Mr. Yates suffer irreparable harm if a stay is not granted?

[41] I agree with ICBC's submission that Mr. Yates cannot show that he would suffer irreparable harm if a stay is not granted. Mr. Yates is seeking the reinstatement of his IRB before the CRT, a monetary remedy. If the CRT determines that ICBC was wrong to suspend his benefits, the CRT will order them reinstated. If the CRT determines that ICBC was not wrong to suspend his benefits, the CRT will not order them reinstated. Any wrong done to Mr. Yates by ICBC is capable of being remedied in damages ordered by the CRT. This means that he will not suffer irreparable harm as that term is understood at law by the stay not being continued.

[42] The third branch of the *RJR* test requires the court to consider the balance of convenience, that is, which of the sides to the dispute would suffer the greater harm from the granting or refusal of the stay. In *526901 B.C. Ltd. v. Dairy Queen Canada Inc.*, 2018 BCSC 1092, at para. 29, the court referred to *Canadian Broadcasting Corp. v. CKPG Television Ltd*. *(1992),* 64 B.C.L.R. (2nd) 96 at p. 102 (C.A.), for a list

of factors which the court may consider in assessing the balance of convenience. Not all of those factors apply in every case. I will consider those which are applicable to this case.

[43] The CRT has exclusive jurisdiction to decide Mr. Yates' entitlement to benefits. If he is entitled to benefits, the CRT will make that order. ICBC says, and I accept counsel's unequivocal representation to this effect, that if the CRT orders it to pay benefits, it will do so. Mr. Yates relied on *Taylor v. Peters*, 2024 BCSC 417, to submit that the court could not accept ICBC's representation that it would pay any benefits ordered by the CRT. ICBC's conduct in that case was found to be egregious. I cannot find that ICBC's failure to conduct itself appropriately in the circumstances of that particular case means that ICBC generally cannot be relied upon to comply with court or tribunal orders.

[44] I have already found that the petition is unlikely to succeed due to prematurity.

[45] The CRT has a statutory mandate to render decisions in matters within its jurisdiction in a manner that is accessible, speedy, economical, informal and flexible. There is a public interest in allowing it to exercise its jurisdiction free from unwarranted interference by the court. This public interest favours the stay not being continued in place.

[46] In this regard, I note Mr. Yates made impassioned submissions that the harms done to his family as a result of him not receiving benefits cannot be remedied after the fact. He submitted that you cannot replace the food taken from his children today with money later. I do not wish to discount the financial impact on Mr. Yates and his family of him not receiving benefits. But the fact is that the *status quo* is that Mr. Yates is not receiving benefits. Ordering that the stay continue in place would not change that fact. Indeed, maintaining the stay would only ensure that the *status quo* of Mr. Yates not receiving benefits remains in place, while permitting the CRT proceedings to continue allows the possibility of the CRT deciding in Mr. Yates' favour and benefits being reinstated to occur.

[47] Considering the matter as a whole, I find that the balance of convenience favours the stay being vacated so that the CRT can fulfill its statutory mandate without further delay.

[48] For these reasons, I find that the interim stay ordered on March 2, 2026 should be dissolved or vacated, and I so order.

Prohibition

[49] Mr. Yates seeks in the nature of prohibition prohibiting the CRT from drawing an adverse inference from his refusal to attend the IME sought by ICBC.

[50] I decline to make such an order. All that the Vice Chair in PD#1 did was advise Mr. Yates of the fact that it was possible that the tribunal member deciding the dispute ultimately would draw an adverse inference from his refusal to attend the ICBC IME. I agree with the Vice Chair that it is legally possible that an adverse inference could be drawn from Mr. Yates' decision. It is impossible to know at this stage whether the tribunal member will ultimately do so. In my view in making this statement, the Vice Chair was properly exercising her discretion to ensure that Mr. Yates, a self-represented person in these persons, was aware of the potential consequences of his decision.

[51] If ultimately the tribunal member deciding Mr. Yates' case does decide to draw an adverse inference and that adverse inference, results in a decision against Mr. Yates' interest, it would be open to him then to seek JR of that decision. It is entirely premature for the court to entertain making an order about this hypothetical possibility at this time.

[52] I dismiss Mr. Yates' application for an order prohibiting the CRT from drawing an adverse inference from his refusal to attend the ICBC IME.

Mandamus

[53] Mr. Yates seek an order in the nature of *mandamus* compelling the CRT to order that he receive interim IRB benefits.

[54] *Apotex Inc. v. Canada (Attorney General),* 1993 CanLII 3004 (Fed CA), is the leading Canadian decision with respect to the principles applicable to *mandamus*. Those principles were recently summarized in *Eaglestone v. Insurance Council of British Columbia*, 2026 BCSC 275, at paras. 28-29:

> [28] As ICBC points out, the relief sought in relation to documents was effectively in the nature of a *mandamus* request, i.e. to compel ICBC to produce additional material to the petitioner. The granting of this type of relief is subject to the Court's discretion. In *Paldi Khalsa Diwan Society v. Cowichan Valley (Regional District)*, 2014 BCCA 335, the Court of Appeal described the framework as follows:
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> > [56] The principles applicable to a claim for *mandamus* relief were summarized by the Federal Court of Appeal in *Apotex Inc. v. Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 F.C. 742 at 766-769 (citations omitted):
> >
> > 1. There must be a public legal duty to act.
> > 2. The duty must be owed to the applicant.
> > 3. There is a clear right to performance of that duty, in particular:
> >
> > (a) the applicant has satisfied all conditions precedent giving rise to the duty;
> >
> > (b) there was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay;
> >
> > 4. Where the duty sought to be enforced is discretionary, the following rules apply:
> >
> > (a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as "unfair", "oppressive" or demonstrate "flagrant impropriety" or "bad faith";
> >
> > (b) *mandamus* is unavailable if the decision-maker's discretion is characterized as being "unqualified", "absolute", "permissive" or "unfettered";
> >
> > (c) in the exercise of a "fettered" discretion, the decision-maker must act upon "relevant", as opposed to "irrelevant", considerations;

> (d) *mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way; and
>
> (e) *mandamus* is only available when the decision-maker's discretion is "spent"; i.e., the applicant has a vested right to the performance of the duty.
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> 5. No other adequate remedy is available to the applicant.
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> 6. The order sought will be of some practical value or effect.
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> 7. The Court in the exercise of its discretion finds no equitable bar to the relief sought.
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> 8. On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.
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> [29] An applicant must meet all eight conditions before the court can award the remedy of *mandamus*: *Apotex Inc. v. Canada (Attorney General)* (1993), 1993 CarswellNat 820, 1993 CanLII 3004 (F.C.A.) at paras. 45; *Zaki v. Director*, 2017 ONSC 1324 at para. 48.

[55] *Mandamus* has no application to the case at bar. Mr. Yates asked the CRT to reinstate his interim IRB. The tribunal member considered that request and declined to do so at this time on the basis that in her view the evidence before her did not substantiate doing so. There has been no refusal on the part of the CRT to make a decision. The CRT has made a decision, albeit one that Mr. Yates does not agree with. *Mandamus* might have some application if Mr. Yates had made that request, and the CRT had simply failed to respond for an unreasonable period of time, in which case the court could make an order requiring it to make a decision. That is not the case here.

[56] Further, the decision whether to grant interim benefits is a discretionary one. While the matter was not fully argued before me, relying on *Apotex,* I would say that *mandamus* is not available where the decision-maker has exercised its discretion unless the exercise of discretion was unfair, oppressive, a flagrant impropriety or in bad faith. There is nothing to suggest that the tribunal member's decision not to reinstate interim IRB benefits was tainted in that manner. Further, the tribunal member's decision is clearly not a final one, as she said that she would not make

such an order “at this time”. This suggests that a further application to the CRT could be made on a better evidentiary record.

[57] For all of these reasons, I dismiss Mr. Yates’ application for an order mandating the CRT to make a decision to provide him with interim IRB.

Costs

[58] The CRT, citing the usual rules which apply to tribunal participation in administrative proceedings, did not seek court costs, and asked that costs not be ordered against it. No costs are ordered for or against the CRT.

[59] ICBC seeks its costs against Mr. Yates. I appreciate that Mr. Yates has a modest income and is representing himself in this matter. That said, ICBC has been entirely successful in this application and is presumptively entitled to its costs. I therefore grant ICBC its costs of these applications.

[60] That concludes my reasons for decision.

“L. Lyster J.”

LYSTER J.