

MAR 03 2020

VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT RORISON AND BRAYDEN METHOT

PLAINTIFFS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANTS

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview of the claim

1. For decades, ICBC has been making payments to the provincial Medical Services Plan contrary to law. Those payments have cost ratepayers hundreds of millions of dollars and driven up insurance costs unnecessarily and unlawfully. Those payments have also caused accident victims to receive fewer benefits than they would have received had ICBC acted lawfully.
2. This class proceeding seeks recovery for BC's motorists and accident victims of the hundreds of millions of dollars in payments ICBC has unlawfully made to the Government.

The parties

3. The plaintiff, Brayden Methot ("Methot"), is a disabled former motorist. Methot is a resident of British Columbia.
4. The plaintiff, Robert Rorison ("Rorison"), is a motorist. Rorison is a resident of British Columbia.

5. Both plaintiffs were, at all material times, insured persons under the *Insurance (Vehicle) Act*, RSBC 1996 c 23 (the “Act”) and the *Insurance (Vehicle) Regulation*, BC Reg 447/83 (the “Regulation”).

6. The defendant, Insurance Corporation of British Columbia (“ICBC”), is a corporation created in 1973 and continued by the *Insurance Corporation Act*, RSBC 1996 c 228 (the “ICBC Act”). Its objects include the operation and administration of a plan of universal compulsory vehicle insurance for British Columbia pursuant to the Act and the Regulation.

7. The defendant, Her Majesty the Queen in right of British Columbia (the “Government”), is the recipient of the Remittances described below.

Methot and the Accident Victim Class

8. On or about the 9th day of June, 2014, Methot was a passenger in a vehicle travelling northbound on Highway 5, approximately five kilometres from Kamloops, British Columbia, when the vehicle he was riding in crossed the centreline and struck an oncoming vehicle. Methot suffered catastrophic injuries in the collision, including an injury to his spinal cord that rendered him quadriplegic.

9. As a result of the collision, Methot was entitled to Accident Benefits as described below.

10. Methot received Accident Benefits from ICBC up to the Limit described below.

11. Methot would have received more Accident Benefits from ICBC if it had not unlawfully paid the Remittances described below to the Government.

12. This action is brought on behalf of members of a class consisting of Methot and all other persons who received Accident Benefits from ICBC up to the Limit since 1973 (the “Accident Victim Class”).

Rorison and the Ratepayer Class

13. Rorison has purchased compulsory auto insurance products from ICBC annually from 1973 to the present. The premiums Rorison has paid have increased substantially in that time.

14. These rate increases are due in part to ICBC's payment of the Remittances described below to the Government.

15. This action is also brought on behalf of members of a further class consisting of Rorison and all other persons who purchased compulsory auto insurance from ICBC since 1973 (the "Ratepayer Class").

The Medical Services Plan

16. The *Medicare Protection Act*, RSBC 1996 c 286 establishes the Medical Services Commission. The Commission's function is to facilitate reasonable access, throughout British Columbia, to quality medical care, health care and prescribed diagnostic services for residents of British Columbia under the Medical Services Plan ("MSP").

17. MSP is British Columbia's publicly funded, universal health care plan.

ICBC's liability to provide benefits to accident victims

18. When a person insured by ICBC is injured in a motor vehicle accident, he or she is entitled to treatment as provided by law (the "Accident Benefits"). An injured person may also be entitled to treatment under MSP and/or private insurance plans. All such treatments are insurance benefits.

19. At all material times, ICBC's obligation to provide Accident Benefits was provided for by law, including (at present) Part 7 of the Regulation.

20. At all material times, ICBC has not been liable for any expenses paid or payable to or recoverable by an insured person under a medical, surgical, dental or hospital plan or law, or paid or payable by another insurer. This is as provided for by s. 88(6) of the Regulation and its predecessor provisions. These provisions limit the expenses ICBC must pay out to accident victims as Accident Benefits.

21. MSP is a medical plan or law, and/or another insurer, within the meaning of s. 88(6) of the Regulation and its predecessor provisions. ICBC is therefore not liable for payments made to

physicians under MSP for benefits to which accident victims are entitled pursuant to the *Medicare Protection Act*.

22. ICBC’s liability to pay Accident Benefits to insured persons is limited by law (the “Limit”). The Limit has varied over time. Most recently the Limit has been \$150,000 for medical and rehabilitation expenses for accidents occurring prior to January 1, 2018 and \$300,000 for medical and rehabilitation expenses for accidents occurring after January 1, 2018.

ICBC’s unlawful payments

23. Section 88(6) of the Regulation, and its predecessor provisions, mean that ICBC is not liable for expenses paid or payable to, or recoverable by, insured persons under MSP.

24. At all material times, British Columbia’s legislative scheme made the Government, through MSP—and not ICBC—responsible for paying the costs of visits to physicians by victims of motor vehicle accidents.

25. Despite this, ICBC has reimbursed the Government, through MSP, for the services of medical practitioners payable as a result of ICBC claims.

26. The payments ICBC has made to the Government as MSP reimbursements (the “Remittances”) since 1988 are, to the best of the plaintiffs’ knowledge, as follows:

\$16,533,334 from January 1, 1988 to December 31, 1988

\$21,575,123 from January 1, 1989 to December 31, 1989

\$28,171,329 from January 1, 1990 to December 31, 1990

\$34,501,547 from January 1, 1991 to December 31, 1991

\$34,915,998 from January 1, 1992 to December 31, 1992

\$41,811,254 from January 1, 1993 to December 31, 1993

\$44,352,893 from January 1, 1994 to December 31, 1994

\$17,139,705 from January 1, 1995 to December 31, 1995
\$41,516,221 from January 1, 1996 to December 31, 1996
\$41,296,855 from January 1, 1997 to December 31, 1997
\$34,418,404 from January 1, 1998 to December 31, 1998
\$27,861,168 from January 1, 1999 to December 31, 1999
\$27,354,819 from January 1, 2000 to December 31, 2000
\$24,692,608 from January 1, 2001 to December 31, 2001
\$20,179,087 from January 1, 2002 to December 31, 2002
\$20,386,409 from January 1, 2003 to December 31, 2003
\$22,047,211 from January 1, 2004 to December 31, 2004
\$22,197,902 from January 1, 2005 to December 31, 2005
\$21,533,169 from January 1, 2006 to December 31, 2006
\$20,831,642 from January 1, 2007 to December 31, 2007
\$21,873,678 from January 1, 2008 to December 31, 2008
\$19,181,512 from January 1, 2009 to December 31, 2009
\$24,040,140 from January 1, 2010 to December 31, 2010
\$20,949,887 from January 1, 2011 to December 31, 2011
\$24,903,162 from January 1, 2012 to December 31, 2012
\$27,286,188 from January 1, 2013 to December 31, 2013
\$39,661,394 from January 1, 2014 to December 31, 2014

\$40,500,276 from January 1, 2015 to December 31, 2015

\$61,478,710 from January 1, 2016 to March 31, 2017

\$56,532,911 from April 1, 2017 to March 31, 2018; and

a sum not yet known from April 1, 2018 onwards.

27. The total amount of Remittances, as best the plaintiffs can at present determine, is \$899,724,536 plus any further sums collected since April 1, 2018 and any sums collected from 1973 to January 1, 1988. Amounts paid as Remittances in the period from 1973 to January 1, 1988 and since April 1, 2018 are within the knowledge of the defendants.

28. The effect for the Government of receiving the Remittances was to raid ICBC's budget for its own benefit and, in so doing, increase ICBC's operating costs.

29. The Remittances have been paid by ICBC to the Government pursuant to an agreement the text of which has never been published (the "Agreement"). Particulars of the Agreement are within the knowledge of the defendants. The intended beneficiary of the Agreement was the Government.

30. The Remittances are unlawful in the ways pleaded herein.

Losses ICBC caused to the Accident Victim Class

31. At all material times, ICBC deducted from the amount of Accident Benefits available to individual members of the Accident Victim Class the amounts payable by it to the Government as Remittances under the Agreement. The effect of this was to unlawfully withhold a portion of the Accident Benefits payable to individual members of the Accident Victim Class (the "Withholdings").

32. At all material times, the Government directed or caused ICBC to make the Remittances pursuant to the Agreement and to reduce the Accident Benefits of members of the Accident Victim Class accordingly.

33. At all material times, ICBC failed to disclose to members of the Accident Victim Class that it was unlawfully reducing the Accident Benefits available to them. Instead, ICBC wrongfully represented to members of the Accident Victim Class that they had reached the Limit of their Accident Benefits when they had not.

34. By deducting from the amount of Accident Benefits available to individual members of the Accident Victim Class the amounts payable to the Government as Remittances under the Agreement, ICBC caused harm to members of the Accident Victim Class. By retaining the Withholdings instead of paying them out, ICBC caused the members of the Accident Victim Class a loss and hindered their ability to meet their care needs and recover from and/or cope with their injuries.

35. By receiving the Remittances pursuant to the Agreement knowing they were unlawful Withholdings, the Government caused, or failed to prevent, harm to members of the Accident Victim Class.

Losses caused to the Ratepayer Class

36. The Remittances have driven up ICBC's operating costs.

37. ICBC has responded to its increased costs by repeatedly applying to its regulator, the British Columbia Utilities Commission ("Utilities Commission"), to increase the rates it charges to the Ratepayer Class for compulsory insurance.

38. ICBC has made these applications to the Utilities Commission at the direction, or with the approval or knowledge, of the Government.

39. ICBC has represented to the Utilities Commission, and to the public, that its applications for rate increases are driven by expenses properly incurred by it. As regards the Remittances, these representations are false because the Remittances are unlawful.

40. ICBC has not disclosed to the Utilities Commission that it was making the Remittances unlawfully.

41. ICBC has been successful in obtaining rate increases from the Utilities Commission.

42. The effect of the rate increases sought and obtained by ICBC has been to increase the amounts paid by the Ratepayer Class for compulsory auto insurance.

Unconstitutional tax

43. The increases to compulsory auto insurance rates sought and obtained from time to time by ICBC from the Utilities Commission as a result of the Remittances constitute a tax on the Ratepayer Class (the “Levies”).

44. The Levies were not enacted in accordance with ss. 53, 90 and 92(2) of the *Constitution Act, 1867*. The Levies were not enacted by the Legislature at all. Rather, they were charged by the Utilities Commission on application by ICBC.

45. The Levies result in the Ratepayer Class being unconstitutionally taxed for the cost of MSP payments unlawfully charged to the Accident Benefit accounts of victims of motor vehicle accidents even though MSP is already funded by the lawful, and constitutionally valid, taxes the Government collects from residents of British Columbia.

46. The Levies are an unconstitutional tax on the Ratepayer Class and are, to the extent of their inconsistency with the Constitution of Canada, of no force or effect pursuant to s. 52 of the *Constitution Act, 1982*.

Negligence

47. At all material times, ICBC owed members of the Accident Victim Class a duty to take reasonable care in determining the amount of Accident Benefits to which they were entitled under the Regulation and in processing claims to ensure that class members are not deprived of benefits to which they are entitled by statute and regulation.

48. ICBC breached the duty of care owed to members of the Accident Victim Class, which caused them loss.

49. At all material times, ICBC and the Government owed the Ratepayer Class a duty to take reasonable care in the setting of rates so that members of the Ratepayer Class would not be

exposed to expenses for which neither ICBC nor the class members have any legal responsibility.

50. The Government breached the duty of care owed to members of the Ratepayer Class, which caused them loss.

Misfeasance in public office

51. At all material times, ICBC and the Government were public bodies and their employees, officers and agents exercised power as public officers.

52. At all material times, ICBC was the agent of the Government.

53. ICBC and the Government engaged in deliberate and unlawful conduct in their capacities as public bodies and/or public officers by: (a) entering the Agreement; and (b) paying and receiving the Remittances.

54. At all material times, ICBC and the Government knew or were subjectively reckless or wilfully blind as to the possibility that:

(a) entering the Agreement was unlawful, contrary to the legislative and regulatory scheme governing Accident Benefits, and likely to harm members of both the Accident Victim Class and the Ratepayer Class; and

(b) paying and receiving the Remittances was unlawful, contrary to the legislative and regulatory scheme governing Accident Benefits, and likely to harm members of both the Accident Victim Class and the Ratepayer Class,

in the ways described in this pleading.

55. The defendants' misfeasance caused the plaintiffs and the other members of the Accident Victim Class and Ratepayer Class injury and loss as set out in this pleading.

Unjust enrichment

56. ICBC has been and continues to be unjustly enriched by both the Levies and the Withholdings. The Government, for its part, is unjustly enriched by the Remittances.

57. ICBC has been and continues to be enriched by the Levies. Members of the Ratepayer Class are correspondingly deprived by the Levies. The Levies form part of the rates members of the Ratepayer Class must pay to insure their vehicles. There is no juristic reason for ICBC's enrichment.

58. ICBC has been and continues to be enriched by the Withholdings. Members of the Accident Victim Class are correspondingly deprived by the Withholdings. The Withholdings are the amounts accident victims would receive in Accident Benefits were ICBC paying them in full as required by law. There is no juristic reason for ICBC's enrichment.

59. The Government has been and continues to be enriched by the Remittances paid to it by ICBC. In particular, the Government is enriched by saving the costs of MSP payments. Members of the Ratepayer Class are correspondingly deprived by the Remittances in an amount equal to the Levies. Payment of the Remittances comes at the expense of the members of the Ratepayer Class, who pay higher insurance rates for compulsory auto insurance as a result. There is no juristic reason for the Government's enrichment.

Breach of trust and knowing receipt

60. The Levies, being the proceeds of ICBC's unjust enrichment, are impressed with a trust in favour of the members of the Ratepayer Class.

61. The Withholdings, also being the proceeds of ICBC's unjust enrichment, are likewise impressed with a trust in favour of the members of the Accident Victim Class.

62. ICBC's payment of the Levies and the Withholdings to the Government as Remittances pursuant to the Agreement is in breach of trust.

63. The Government has received and continues to receive the Remittances from ICBC knowing they are trust property transferred to it in breach of trust. Despite this, the Government

has failed to perform its trust duties to preserve the Remittances as trust assets and restore them to their beneficial owners, the members of the Ratepayer Class.

64. The Government is liable to the members of the Ratepayer Class for its knowing receipt of trust property.

Breach of contract and duty of good faith

65. ICBC and each member of the Ratepayer Class are parties to insurance contracts. Each of those contracts includes a duty of good faith.

66. In addition, ICBC is the statutory first party insurer of members of the Accident Victim Class and has a duty to act in good faith when assessing the Accident Benefits payable to them.

67. At all material times, Rorison and other members of the Ratepayer Class were unable to negotiate with ICBC for the rates they paid under their contracts with ICBC, but were instead forced to pay the rates proposed by ICBC and set by the Utilities Commission in order to obtain compulsory auto insurance products.

68. ICBC breached, and continues to breach, its contractual duties. In particular:

(a) in the case of the Accident Victim Class, ICBC breached its duty to act in good faith when assessing the Accident Benefits payable to them;

(b) in the case of those members of the Ratepayer Class who are also members of the Accident Victims Class, ICBC breached its contracts with them (including but not limited to its insurer's duty of utmost good faith) by deducting from the amount of Accident Benefits available to individual members of the Accident Victim Class the amounts payable by ICBC to the Government as Remittances under the Agreement; and

(c) as the sole provider of compulsory basic auto insurance in British Columbia, ICBC breached its duty of good faith to the Ratepayer Class by seeking and obtaining increases to insurance rates in order to pay the Remittances.

The defendants' wilful concealment of their misconduct

69. The defendants have wilfully concealed from the public, including the plaintiffs and the other members of the Accident Victims Class and the Ratepayer Class, the existence and circumstances of the Agreement, the payment of the Remittances by ICBC to the Government contrary to law, and the unlawful Withholdings.

70. The defendants' wilful concealment has succeeded to date in concealing from would-be claimants the fact that they have suffered injury, loss or damage caused by or contributed to by the defendants or either of them.

Part 2: RELIEF SOUGHT

71. The plaintiffs seek against the defendants jointly and severally

(a) an order certifying this proceeding against the defendants as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996 c 50 and appointing Methot as representative plaintiff in respect of the Accident Victim Class and Rorison as the representative plaintiff in respect of the Ratepayer Class;

(b) a declaration that the Levies are an unconstitutional tax contrary to ss. 53, 90 and 92(2) of the *Constitution Act, 1867* and restitution of the moneys collected to Rorison and the other members of the Ratepayer Class;

(c) a monetary award for Rorison and the other members of the Ratepayer Class for unjust enrichment;

(d) damages for Rorison and the other members of the Ratepayer Class for negligence, misfeasance in public office and breach of contract;

(e) in the event that damages prove an inadequate remedy, equitable relief for Rorison and the other members of the Ratepayer Class, including restitution, an accounting, and tracing of the proceeds;

- (f) a monetary award for Methot and the other members of the Accident Victim Class for unjust enrichment;
- (g) damages for Methot and the other members of the Accident Victim Class for negligence, misfeasance in public office and breach of contract in a sum equal to the Withholdings, together with general and pecuniary damages;
- (h) in the event that damages prove an inadequate remedy, equitable relief for Methot and the other members of the Accident Victim Class, including restitution, an accounting, and tracing of the proceeds;
- (i) punitive damages for Methot and the other members of the Accident Victim Class;
- (j) costs;
- (k) interest pursuant to the *Court Order Interest Act*, RSBC 1996 c 79; and
- (l) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

- 72. Sections 53, 90 and 92(2) of the *Constitution Act*, 1867, and s. 52 of the *Constitution Act*, 1982.
- 73. The tort of negligence.
- 74. The tort of misfeasance in public office.
- 75. The law of unjust enrichment.
- 76. The law of trusts.
- 77. Breach of contract.

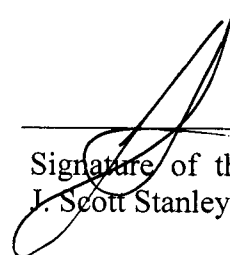
Plaintiffs' address for service: Murphy Battista LLP
2020-650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Fax number address for service: (604) 683-5084

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

Dated: March 3, 2020



Signature of the lawyer for the plaintiffs
J. Scott Stanley

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Province of British Columbia (the "Government") and the Insurance Corporation of British Columbia ("ICBC") knowingly engaged in an unlawful scheme to divert monies from the accident benefit accounts of persons injured in motor vehicle accidents to the Medical Services Plan of British Columbia ("MSP"). As a result of this scheme two classes of people sustained losses.

The first class of people were those injured in car accidents and who were entitled to accident benefits, but who were unable to use the full amount of the benefits available to them because ICBC unlawfully, and at the direction of the Government, applied MSP charges to their accounts thereby unlawfully reducing their level of accident benefits.

The second class of people were those who were forced to buy compulsory automobile insurance from ICBC and who were required to pay increased premiums for this insurance because ICBC unlawfully, and at the direction of the Government, took money that was required by law to be used only for a purpose related to the lawful operations of ICBC and paid this to the Government in the form of MSP remittances. ICBC, at the direction of the Government, routinely applied to the B.C. Utilities Commission for rate increases but never disclosed this unlawful scheme which resulted in this class of people paying more for their compulsory automobile insurance.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money

- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflicts of law
- none of the above
- do not know

Part 4: ENACTMENTS RELIED ON

1. *Insurance (Vehicle) Act*, RSBC 1996 c. 231;
2. *Insurance Corporation Act*, RSBC 1996 c. 228; and
3. *Constitution Act, 1867*.

This Notice of Civil Claim is prepared and filed by J. Scott Stanley of the firm Murphy Battista LLP, whose place of business and address is 2020 – 650 West Georgia Street, Vancouver, BC, V6B 4N7 Tel (604) 683-9621 (File NO. H576)