

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

UFUK ARI

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANTS

Brought Under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Restriction on publication: An order has been made in this proceeding pursuant to the Court's inherent jurisdiction that prohibits publication of any information that could identify any of the potential class members, except those who have commenced proceedings in this Court; and license plate numbers, driver's license numbers, vehicle descriptions, vehicle identification numbers, and addresses of any potential class members. This publication ban applies indefinitely unless otherwise ordered.

ORDER MADE AFTER SUMMARY TRIAL

BEFORE))	Wednesday, the
))	3rd day of
))	June, 2024

THE HONOURABLE MR.
JUSTICE N. SMITH

THE SUMMARY TRIAL OF THE CLASS WIDE DAMAGES coming on for hearing on April 24, 2024 in the presence of G.J. Collette and A.C.R. Parsons, counsel for the Plaintiff and J.M. Campbell, D.G. Cowper, K.C. and K. Purcell, Articled Student, counsel for the Defendants; AND JUDGMENT being reserved and rendered on June 3, 2024:

THIS COURT ORDERS that:

1. The persons listed in **Appendix "A"** and the family members and other residents at their residences when their files were unlawfully accessed by Candy Elaine Rheume are Class Members.
2. The Class Members numbered 2, 7, 9, 14, 24, 35, 36, 41, 43, 46, 57, 61 and 71 in Appendix "A" resided at premises that received property damage caused by third

party attacks and they and their family members and other residents of their residences at the time of the attacks are Subclass Members.

3. General, non-pecuniary damages for breach of the *Privacy Act*, R.S.B.C. 1996, c. 373 is awarded on a class wide basis in the amount of \$15,000 per Class Member.
4. Class Counsel fees of 35% of the aggregate Class Wide Damages inclusive of disbursements, taxes and interest is approved.
5. An honorarium of \$10,000 be paid to the representative plaintiff, Ufuk Ari, from Class Counsel's percentage fee.
6. The Litigation Plan attached as **Appendix "B"** is approved.
7. The Notice of Determination of Common Issues attached as **Appendix "C"** is approved.
8. The Class Members listed in Appendix "A" are directed to provide a copy of the Notice of Determination of Common Issues to the family members and other residents at their residences, who are legally competent or to the legal representatives for the other residents who are minors (under the age of 19) or otherwise under a legal disability, on the date their files were unlawfully accessed by Candy Elaine Rheaume.
9. ICBC mail the Notice of Determination of Common Issues by certified mail to the last known addresses of all Class Members listed in Appendix "A" within 21 days of this order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of lawyer for the Plaintiff
A.C.R. Parsons

Signature of lawyer for the Defendants
D.G. Cowper, K.C.

BY THE COURT

Registrar

APPENDIX "A" (the "Identified Class Members")

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APPENDIX "A" (the "Identified Class Members")

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APPENDIX "A" (the "Identified Class Members")

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APPENDIX "B": LITIGATION AND NOTICE PLAN

Upon receipt of the judgment quantifying the class-wide general, non-pecuniary damages (the "Baseline Non-Pecuniary Damages") every Identified Class Member (being the 74 persons listed in Appendix "A") will be sent the Notice of Determination of Common Issues, and the Claims Form & Damages Questionnaire (the "Notice Package"). The date Candy Elaine Rheume accessed each of the Identified Class Members' files will be included in the Notice Package.

ICBC will mail, by certified mail, the Notice Package to the Identified Class Members at the most recent contact addresses for the Identified Class Members in ICBC's possession within 21 days of issuance of the court's order approving the Notice Package.

The Identified Class Members will be directed to provide a copy of the Notice Package, within 30 days of receipt of the Notice Package, to every family member and other residents (the "Resident Class Members") who resided at their residences on the date Ms. Rheume accessed their files (the "Access Date"). The Notice Package will also be available on Class Counsel's website.

To receive the Baseline Non-Pecuniary Damages, each Class Member must complete and return (by email, fax or mail) the Claims Form to Class Counsel within 90 days of mailing of the final Notice Package to Identified Class Members (the "Claims Deadline"). The Claims Deadline will be provided on Class Counsel's website: <https://parsonscorin.ca/icbc>. If Class Members do not return the completed Claims Form by the Claims Deadline, they will have no further entitlement to damages without the consent of the Defendant or further order of the court where a legitimate reason for the delay is provided.

Within 14 days after the Claims Deadline, Class Counsel will provide all Claims Forms and Damages Questionnaires to counsel for the Defendant.

Within 21 days of receipt by counsel for the Defendant of all the Claims Forms and Damages Questionnaires, ICBC will provide notice to Class Counsel of any disputed Class Members entitlement to the Baseline Non-Pecuniary Damages and the reason for the dispute (the "Deadline for Dispute"). A hearing will be set before the Case Management Judge to resolve the entitlement of any disputed Class Members, which cannot be resolved between the parties (or resolved by a referee by agreement of the parties).

Within 21 days of the Deadline for Dispute, ICBC will provide payment to Class Counsel for the Baseline Non-Pecuniary Damages for all non-disputed Class Members (the "Payment Deadline").

Within 21 days of the Payment Deadline, Class Counsel will mail cheques payable to all non-disputed Class Members in the amount of the Baseline Non-Pecuniary Damages, less approved Class Counsel fees.

Following finalization of any disputed entitlements of Class Members, ICBC's liability for Baseline Non-Pecuniary Damages will be fully and finally satisfied. The Action will then proceed to the individual issues stage, as governed by the Individual Damages Litigation Plan.

APPENDIX "C" - NOTICE OF DETERMINATION OF COMMON ISSUES

This is further to the Notice of Certification sent to you dated April 23, 2020. You were identified as a possible class member and did not Opt-Out of the Action. The court has now confirmed you are an Identified Class Member whose ICBC file was accessed on the date(s) stated at the top of the enclosed Claims Form and Damages Questionnaire (the "**Access Date**").

Additionally, every family member and other residents who resided at your residence on the date(s) your ICBC file was unlawfully accessed is entitled to compensation (the "**Resident Class Members**"). The court has directed that you provide a copy of this Notice of Determination of Common Issues to all Resident Class Members, if any, who are legally competent or to the legal representatives for the Resident Class Members who are minors (under the age of 19) or otherwise under a legal disability, within 30 days of receipt of this Notice of Determination of Common Issues.

i. The Class Members are:

Natural Persons who have had their personal information accessed by Ms. Rheame for nonbusiness purposes and the family members and other residents at the residences of those natural persons.

ii. The Subclass Members are:

The Class Members who resided at premises that received property damage caused by third party attacks.

THE COMMON ISSUES WERE DETERMINED AS FOLLOWS:

1. Ms. Rheame breached the Class Members' privacy pursuant to the *Privacy Act*, R.S.B.C. 1996, c. 373, when she accessed Class Members' personal information wilfully and without a claim of right from ICBC databases.
2. Class Members are entitled to general, non-pecuniary damages of \$15,000 on a class-wide basis for the breach of the *Privacy Act*.
3. Individual Class Members are entitled to pecuniary damages for losses suffered and expenses incurred due to Ms. Rheame's breach of the *Privacy Act*, as well as any individual nonpecuniary damages over and above that suffered by all Class Members, subject to proof of those damages in the individual issues phase of the class proceeding.
4. ICBC is vicariously liable for the general damages and pecuniary damages caused by its employee's breaches of the *Privacy Act*.
5. The attacks were not unforeseeable intervening acts, and liability extends to the property damage that the Subclass Members suffered as a result of the attacks.

6. Individual Subclass Members are entitled to damages over and above the general damages awarded to the whole class, subject to proof of those damages in the individual issues phase of the class proceeding.
7. ICBC's conduct in the circumstances does not justify an award of punitive damages against ICBC.

Every Class Member has been awarded general, non-pecuniary damages of \$15,000 (the "**Baseline Non-Pecuniary Damages**"). The fees to Class Counsel have been approved by the court at 35% of the Class Wide Damages inclusive of disbursements, taxes and interest. After deduction of legal fees and disbursements each Class Member will receive \$9,750. The Court has approved the payment of a \$10,000 honorarium to the representative plaintiff to be paid from Class Counsel's percentage fee. You are not required to pay any additional fees, disbursements, taxes or interest to receive the Baseline Non-Pecuniary Damages.

The Court has directed that as an Identified Class Member you must provide the names and contact information of the Resident Class Members (family members and other residents at your residence on the Access Date) by completing the Claims Form. Identified Class Members are also directed to provide a copy of this Notice of Determination of Common Issues to all Resident Class Members who are legally competent or to the legal representatives for those who are minors (under the age of 19) or otherwise under a legal disability.

Further proof of residence and eligibility as a Class Member may be required if your Claims Form is disputed.

You can see full copies of the judgments and copies of the Claims Form and Damages Questionnaire on Class Counsel's website <https://parsonscorrin.ca/icbc>.

Class Members must complete the attached Claims Form and (optional) Damages Questionnaire and return it to Class Counsel as set out below by the Claims Deadline stated on the website (being 90 days from the date the final Notice Package was mailed to Identified Class Members). Please submit the Claims Form and Damages Questionnaire to Class Counsel:

By mail at:

Parsons Corrinn LLP
1750-700 West Georgia Street
Vancouver, B.C. V7Y 1B6
604-662-7777

By Fax at: 604-669-4053

By email at: ICBCPrivacyBreachClaims@parsonscorrin.ca.

Scan this QR Code
to open Class
Counsel website
in your smartphone's
internet browser:



Class Counsel will confirm receipt of each Claims Form & Damages Questionnaire received. If you do not receive confirmation within 7 days, please call Class Counsel at 604-662-7777 stating that you are following up on the Claims Form & Damages Questionnaire. Your cheque will be sent by regular mail to the address you provide within 21 days of Parsons Corrin LLP receiving the judgment funds from ICBC.

You must submit a completed Claims Form by the Claims Deadline noted on the website (being 90 days from the day the final Notice Package was mailed to Identified Class Members), along with satisfactory proof of identity (for Identified Class Members) or proof of residence at the Access Date(s) (for Resident Class Members). If you are having difficulty providing proof of residence within 90 days of the Access Date(s), please contact Class Counsel for assistance. If you fail to complete and return the Claims Form by this deadline, you will not be entitled to receive the Baseline Non-Pecuniary Damages without further order of the court.

Individual Damages:

Even if you claim for and receive the Baseline Non-Pecuniary Damages, you can also claim for additional damages if you have suffered a physical injury or a mental injury that is serious and prolonged, and rises above the ordinary annoyances, anxieties, and fears that people living in our modern society routinely experience including any consequential pecuniary (money) losses incurred due to physical or mental injury. Monetary losses not already paid to you by ICBC due to the privacy breach are also recoverable (i.e. security expense, moving expense, property damage, insurance claims, income loss, etc.) (the “**Individual Damages**”). Individual Damages must be proven and assessed individually. A further court hearing will settle the process for determining Individual Damages Claims. To claim for additional Individual Damages beyond the Baseline Non-Pecuniary Damages you must complete the Claims Form AND the optional Damages Questionnaire by the Claims Deadline.

Class Counsel will review the Class Member's Individual Damages Questionnaires and are available to act for Class Members who have, in the opinion of Class Counsel, meritorious claims. Fees and disbursements are payable to Class Counsel on the Individual Damages awarded on a contingency basis (i.e., no fee is paid if no recovery) and will be determined on a case-by-case basis.

Further information regarding this Class Action is available at <https://parsonscorrin.ca/icbc>.

You may obtain more information by email to ICBCPrivacyBreachClaims@parsonscorrin.ca or by calling 604-662-7777.

This Notice of Determination of Common Issues has been approved by the Supreme Court of British Columbia.

ACCESS DATE(S): _____

CLAIMS FORM & DAMAGES QUESTIONNAIRE

Claims Form

Full Name:	
Current Address:	
Address at Access Date:	
Current Phone Number:	
Current Email:	

The following are the names and contact information of all the individuals resident at your residence, if any, on the Access Date(s):

Proof of identity (for Identified Class Members): If you were the addressee on this correspondence, then you are an Identified Class Member. To recover the Baseline Non-Pecuniary Damages, you must complete this Claims Form and provide proof of identify by providing a scan of your valid government-issued identification showing the same name on this correspondence.

Proof of residence (for Resident Class Members): If you resided in a home occupied by an Identified Class Member on the Access Date(s), you are required to provide proof of residence within 90 days of the Access Date(s). Please enclose with your Claims Form & Damages Questionnaire a bill or piece of mail including your name, address, and date. For minors, alternative documentation of residence may include a report card, or government document. If you are having difficulty providing proof of residence please advise Class Counsel by email at ICBCPrivacyBreachClaims@parsonscorrin.ca or by calling 604-662-7777.

You must submit a completed Claims Form and supporting documentation by the Claims Deadline on the website: <https://parsonscorrin.ca/icbc> (being approximately 90 days from the date this package was mailed), or you will not receive the Baseline Non-Pecuniary Damages without further order of the court.

Individual Damages Claim (Optional):

Are you claiming for and do you believe you qualify for Individual Damages as set out in the Notice of Determination of Common Issues?

No ____ Yes ____

If you answered "no" to the above question, skip the Individual Damages section of this Damages Questionnaire. You will be deemed to have accepted the Baseline Non-Pecuniary Damages in satisfaction of your claim. You will receive the net amount of the Baseline Non-Pecuniary Damages after deducting whatever class counsel fees and disbursements are approved and will not be entitled to any further compensation from ICBC for the privacy breach.

If you answered "yes" to the above question, complete the following Individual Damages section of this questionnaire:

Individual Damages Questions:

Class Counsel will be in contact to request additional information and documentation in relation to your responses below.

Question #1: Have you experience mental or emotional distress due to the privacy breach which is serious and prolonged and rises above the ordinary annoyances, anxieties and fears that people in society routinely, accept.? No ____ Yes ____

If you answered yes to question #1, please describe in detail the mental or emotional distress you experience including whether you had counselling, medical or psychiatric treatment due to the privacy breach. (Attach additional pages if necessary):

Question #2: Did you spend money or lose money due to the privacy breach that you have not already recovered from ICBC? No ____ Yes ____

If you answered yes to question #2, please describe in detail the expenses or loses you incurred including an estimate of the amount. (Attached additional pages if necessary):

Question #3: Did you suffer property damage due to the privacy breach not already recovered from ICBC? No _____ Yes _____

If you answered yes to question #3, please describe in detail the property damage you suffered and an estimate of the amount. Your estimate should include any of the property damage paid or reimbursed through insurance coverage. (Attach additional pages if necessary):

Question #4: Did any insurance company pay or reimburse any amount of the property damage you suffered? No _____ Yes _____

If you answered yes to question #4, please provide an estimate of the amount paid or reimbursed. (Attach additional pages if necessary):

If you answered yes to question #4, did your insurance premiums increase or did you have difficulty obtaining insurance due to the privacy breach? If so, provide the details including and estimate of the costs (Attach additional pages if necessary):

I certify that the above information is true to the best of my knowledge this _____ day of _____, 2024.

Signature