



# Civil Resolution Tribunal

Date Issued: July 6, 2022

File: VI-2021-001085

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *McDermott v. Boston*, 2022 BCCRT 773

B E T W E E N :

MARK MCDERMOTT

**APPLICANT**

A N D :

KELVIN CRAIG BOSTON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on August 7, 2020 in Clinton, British Columbia.
2. The applicant, Mark McDermott, says he was riding his motorcycle on a single-lane gravel road, when he went around a sharp corner and saw a pick-up truck driven by

the respondent, Kelvin Craig Boston, coming towards him. Mr. McDermott says that he had to lay his motorcycle down on its side to avoid a head-on collision, and that he and his motorcycle slid into Mr. Boston's truck.

3. The parties disagree about who is responsible for the accident. Mr. McDermott says some of his fellow riders had already gone around the corner, so Mr. Boston should have anticipated more would be coming. Mr. McDermott argues that Mr. Boston is at least 75% liable, for failing to stop sooner. Mr. Boston says he was already stopped, and that Mr. McDermott is fully liable because he lost control of his motorcycle when coming around the sharp corner.
4. Mr. McDermott was undisputedly injured as a result the accident. The parties agree that Mr. McDermott is entitled to \$37,500 for non-pecuniary (pain and suffering) damages, subject to my liability assessment.
5. Mr. McDermott is self-represented. Mr. Boston is represented by an employee of his insurer, Insurance Corporation of British Columbia (ICBC).

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.
7. At the time Mr. McDermott filed his CRT dispute, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. On March 2, 2021, the British Columbia Supreme Court (BCSC) ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA) then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA.

8. The CRT provided Mr. McDermott with information about the BCSC's decision and the BCCA's partial stay. The CRT asked Mr. McDermott whether he wanted to continue with the CRT dispute or file a court proceeding instead. Mr. McDermott chose to continue at the CRT.
9. On May 12, 2022, the BCCA overturned the BCSC's decision. This means the CRT retains jurisdiction to resolve claims under sections 133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b). However, given Mr. McDermott already consented to continuing his dispute at the CRT, nothing turns on the BCCA's latest decision.
10. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
11. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
12. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

13. During the CRT's tribunal decision process, ICBC on Mr. Boston's behalf, advised CRT staff that it intended to claim a deduction from Mr. McDermott's damages award under the *Insurance (Vehicle) Act* (IVA). The IVA prohibits a party from telling the tribunal member details about any deduction until after the tribunal member has assessed damages. CRT staff informed me that the respondent intended to claim a deduction, but not the type of deduction or the amount. Given my conclusion on liability below, I determined that it was unnecessary to make any findings about potential deductions, so I did not ask the parties for further submissions on the claimed deductions.

## **ISSUE**

14. The issue in this dispute is who is liable for the August 7, 2020 accident.

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, Mr. McDermott as the applicant must prove his claims on a balance of probabilities, meaning "more likely than not". I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
16. It is undisputed that on August 7, 2020 at approximately 4:30 pm, Mr. McDermott was driving his motorcycle with a group of 4 other riders on Meadow Lake Road, which is an unpaved backcountry road. At least 2 riders were travelling in front of Mr. McDermott. The scene photos show the road was hard packed dirt and gravel, just wide enough that 2 vehicles could pass each other. However, the parties generally describe it as a single-lane road, where vehicles drive down the middle.
17. Mr. Boston was driving his pick-up truck in the opposite direction to the motorcyclists. The accident happened at a sharp bend in the road. From Mr. Boston's direction, the road curved left and from Mr. McDermott's direction, it curved right. This means that Mr. Boston was on the outside of the curve and Mr. McDermott was on the inside of the curve. None of this is disputed.

18. The parties have slightly different accounts of how the accident happened. Mr. McDermott says he was travelling approximately 50 to 55 kilometres per hour, and he was about 100 feet behind the motorcycle ahead of him. Mr. McDermott describes the bend in the road as a “blind corner”, with a steep hillside on the right side of the road blocking the view of oncoming vehicles. Mr. McDermott says he was in his “lean” after entering the corner, when he saw Mr. Boston’s pick-up truck coming towards him. He says Mr. Boston was about 30 to 40 feet away when he first saw him.
19. Mr. McDermott says he had to react instantly, so he applied his rear brake and started sliding forward. He says to avoid hitting Mr. Boston head-on, he laid his motorcycle down on its side while it continued sliding. The back wheel of Mr. McDermott’s motorcycle hit the front tire of Mr. Boston’s truck, and the impact spun the motorcycle under the truck and flung Mr. McDermott to the side of the road.
20. Mr. McDermott says Mr. Boston did not pull over to stop until he saw Mr. McDermott coming around the corner. Mr. McDermott admits that Mr. Boston was on the right side of the road and was no longer moving at the time of the impact. However, he says Mr. Boston should have stopped further back when he saw the first riders come around the corner.
21. In contrast, Mr. Boston says he saw some dust in the air as he approached the corner, so he slowed down and came to a stop on his side of the road. He says the first 2 motorcycle riders then came around the corner and just missed his truck. Mr. Boston says he remained stopped, and that Mr. McDermott lost control of his motorcycle as he came around the sharp corner and slid into his truck.
22. The question is whether Mr. McDermott has established that Mr. Boston’s driving fell below the standard of a reasonably careful and prudent driver in the circumstances. For the following reasons, I find he has not.
23. First, Mr. McDermott argues that a witness confirmed Mr. Boston was still moving toward the curve after the first motorcycles passed him. The witness was the driver of the motorcycle travelling directly behind Mr. McDermott, SV, who spoke with ICBC

over the phone on December 14, 2020. ICBC's notes of the conversation show SV reported that as they were approaching the corner, Mr. McDermott saw Mr. Boston's vehicle and hit his brakes. SV stated that Mr. Boston stopped once he saw Mr. McDermott coming towards him.

24. Mr. McDermott also provided a signed statement from SV dated March 13, 2022. In it, SV stated that the road sloped downhill in their direction of travel, toward "an exceedingly tight turn, and an absolutely blind corner". He stated that given the "lack of vision", he did not see the truck travelling toward them until it was "in close proximity".
25. I accept SV's evidence about the curve being tight and blind, as it is consistent with the parties' statements and the photographic evidence. However, given that vehicles approaching the curve could not see traffic approaching in the opposite direction, I do not accept that either Mr. McDermott or SV saw Mr. Boston's truck before they entered the corner. So, given that SV was somewhere behind Mr. McDermott, I find that SV would have been unable to see whether Mr. Boston was still moving as Mr. McDermott rounded the corner. Overall, I place no weight on SV's comments about Mr. Boston's actions before the accident.
26. Neither party provided any statements from the riders in Mr. McDermott's group that rounded the bend ahead of Mr. McDermott, nor any explanation for failing to provide this seemingly relevant evidence. There were no other witnesses to the accident. So, there is no independent evidence before me about whether Mr. Boston was still moving or stopped when Mr. McDermott rounded the corner towards him.
27. On balance, I find that Mr. McDermott's evidence that Mr. Boston was still moving forward is not reliable. I say this because on Mr. McDermott's own evidence, he did not see Mr. Boston until he was already rounding the corner, and he had to make a split-second decision about how to react. I find he likely did not have time to assess whether Mr. Boston was stopped or moving. He did not suggest that Mr. Boston was moving quickly or that he had to make an abrupt stop. Further, in a December 8, 2020 email to ICBC, Mr. McDermott stated: "And like I said I can not tell if he is moving or

still at the instant that I see him and have to make a decision” (reproduced as written). Therefore, I do not accept that Mr. McDermott saw Mr. Boston moving towards the curve as Mr. McDermott came around the corner.

28. However, even if Mr. Boston was moving, I find that does not necessarily prove he was negligent. Mr. McDermott does not dispute that Mr. Boston’s truck was on the righthand side of the road when he first saw him. The photos taken after the accident show the truck’s passenger side wheels are on the very edge of road, and there was enough room for Mr. McDermott to pass beside him if he stayed on his side of the road as he rounded and exited the curve.
29. Mr. McDermott submits that Mr. Boston moved his truck back and to the right after the collision to dislodge his motorcycle. However, based on the photos showing the motorcycle still under the truck, I find he could not have moved the truck significantly over to the right before the photo was taken. Overall, I find Mr. Boston was properly travelling on the righthand side of the road before the collision.
30. Further, given that Mr. McDermott admits that Mr. Boston was able to stop before the impact, I find that if Mr. Boston was moving, he was travelling at a reasonable and safe speed under the circumstances.
31. I also note that I do not accept Mr. McDermott’s submission that Mr. Boston should have stopped after the first 2 motorcycles passed him, in anticipation that more would be coming around the blind corner. It is unclear why Mr. Boston should have known how many people were in Mr. McDermott’s group.
32. I also find Mr. McDermott’s submission suggests that the motorcyclists, including Mr. McDermott, were travelling at a speed that would not allow them to stay on their side of the road as they rounded the corner. I find that Mr. Boston was entitled to assume that other drivers would follow the rules of the road, including staying to the right as they rounded a tight, blind corner. While the road was relatively narrow, I find that so long as the drivers travelled at a safe speed and with reasonable caution to stay on

the right side of the road when coming around the curve, they could pass relatively easily.

33. Overall, I agree with Mr. Boston that Mr. McDermott was travelling too fast for the conditions. Mr. McDermott says the weather was good and he was going at or below the speed limit. However, despite these factors, I find that he failed to anticipate oncoming traffic or any other hazard that might be ahead, and he was unable to safely negotiate the very tight, blind corner. I find his failure to keep his motorcycle on the right side of the road breached section 144(1) of the *Motor Vehicle Act*, which requires drivers to drive with due care and attention and with a reasonable consideration of others on the road. I find that Mr. McDermott's conduct fell below the standard of a reasonably careful and prudent driver.
34. I find Mr. McDermott was fully responsible for the accident. It follows that he is not entitled to any damages, and I dismiss his claims.
35. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. McDermott was not successful, so I dismiss his claim for CRT fees and dispute-related expenses. I also find that he must reimburse Mr. Boston for his \$25 in paid CRT fees. Mr. Boston did not claim any dispute-related expenses.

## **ORDERS**

36. Within 30 days of the date of this decision, I order the applicant, Mark McDermott, to pay the respondent, Kelvin Craig Boston, a total of \$25 as reimbursement of CRT fees.
37. Mr. Boston is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
38. Mr. McDermott's claims are dismissed.



39. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Kristin Gardner, Tribunal Member