



# Civil Resolution Tribunal

Date Issued: January 30, 2023

File: VI-2022-005089

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Bowering v. Johnson*, 2023 BCCRT 74

BETWEEN:

DENISE BOWERING

**APPLICANT**

AND:

LEONARD JOHNSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on July 20, 2020 in Penticton, British Columbia, between the applicant, Denise Bowering, and the respondent, Leonard Johnson.

2. The applicant says she was injured as a result of the accident, and initially sought a total of \$30,902.75 in damages, though she later reduced this to \$25,627, which includes \$5,627 in non-pecuniary (pain and suffering) damages, \$10,000 for past income loss, and \$10,000 for future income loss.
3. The respondent denies any responsibility for the accident. They say the applicant was fully responsible and so she is not entitled to any damages. In the event the respondent is found at least partially responsible, the respondent agrees the applicant's non-pecuniary damages total \$5,627 subject to the liability assessment, but denies she has proven any entitlement to compensation for lost income.
4. The applicant represents herself. The respondent is represented by an authorized employee of their insurance company, Insurance Corporation of British Columbia (ICBC).

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. Section 39 of the CRTA says that 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 in this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh

the documentary evidence and submissions before me. I also note that in *Yas v. Pope*, 2018 BCSC 282, 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.

8. 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.

### ***Claim for damages***

9. As noted, in the Dispute Notice, the applicant initially claimed a total of \$30,902.75 in damages, including \$4,000 for future care costs and \$1,275.75 for special damages (out-of-pocket expenses). CRT staff advised me that the applicant withdrew her claims for future care costs and special damages, so I have not considered them in this decision. However, given my conclusion on liability below, nothing turns on this in any event.

## **ISSUES**

10. The issues in this dispute are:
  - a. Who is responsible for the July 20, 2020 accident, and
  - b. To what extent, if any, the applicant is entitled to the claimed damages.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities, meaning "more likely than not". While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***Who is responsible for the accident?***

12. The applicant says the accident occurred after she had completed a 90 degree turn while reversing from a parking stall when the respondent hit her vehicle. A diagram she provided to ICBC indicates the applicant backed out of the stall and to the left, while the respondent was approaching from the right. The applicant says the accident happened when she was about to continue forward to leave the parking lot.
13. In contrast, the respondent says they were traveling in the aisle of the parking lot when the applicant backed her vehicle into theirs as they passed by the applicant's parking stall.
14. It is undisputed the applicant's right rear bumper and the respondent's rear passenger door came into contact. No witness statements or video footage were provided.
15. The applicant says the respondent should be held solely responsible for the accident for driving too fast in the parking lot and not giving the applicant the right of way. The respondent says the applicant is fully at fault for reversing her vehicle when it was unsafe to do so.
16. Here, I am unable to reconcile the applicant's version of events and diagram with the vehicle damage. If the accident occurred as the applicant says, her vehicle would have been facing the respondent's as the respondent drove down the aisle. So, I find the accident could not have happened once the applicant had "completed a safe and smooth 90 degree turn" as she alleges.
17. Rather, I find the vehicle damage locations are consistent with the respondent's vehicle being directly behind, and nearly perpendicular, to the applicant's vehicle as she reversed out of the parking stall. So, I find the applicant was reversing when the accident occurred.
18. Section 193 of the *Motor Vehicle Act* (MVA) says that a driver must not reverse their vehicle unless it can be done safely. While this section does not impose absolute liability on a driver backing up, it does impose a high standard of care because a

driver's visibility is reduced when driving in reverse. Backing up in a parking lot, where there are often pedestrians and other vehicles, requires considerable care (see: *Araujo v. Vincent*, 2012 BCSC 1836 at paragraphs 34 to 36). This high standard applies the entire time the driver is reversing, not just when they start (see: *Carson v. Henyecz*, 2012 BCSC 314 at paragraph 99).

19. Although the applicant argues the respondent failed to yield the right of way to her vehicle and failed to allow her vehicle to finish reversing, I disagree. The respondent, as the vehicle in the aisle, had the right of way, and I find it was the applicant who should have yielded to the respondent.
20. Given all the above, I find the applicant was solely responsible for the accident. I say this because the points of impact are consistent with the applicant reversing into the respondent, and are not consistent with the applicant's version of events. I find the applicant failed to keep a proper lookout for other vehicles when reversing out of the parking stall, in breach of section 193 of the MVA.
21. As I have found the applicant 100% responsible, I dismiss her claim for damages.

## **FEES, EXPENSES AND INTEREST**

22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. The applicant was unsuccessful and did not pay any tribunal fees. As the respondent was successful, I find the applicant must reimburse them \$50 in tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this decision, I order the applicant to pay the respondent a total of \$50 as reimbursement of tribunal expenses.
24. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.

25. The applicant's claims are dismissed.

26. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force

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Andrea Ritchie, Vice Chair