



# Civil Resolution Tribunal

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File: SC-2017-005030

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weatherill et al v. Insurance Corporation of British Columbia et al.*,  
2019 BCCRT 53

**B E T W E E N :**

Sean Weatherill and Ellen Gayle Weatherill

**APPLICANTS**

**A N D :**

Insurance Corporation of British Columbia, Provincial Health Services  
Authority DBA BC Ambulance, and Kelvin Bun Li

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

1. This is a dispute about liability for a motor vehicle accident.

2. On May 27, 2016, a collision occurred involving a 2015 Jeep Cherokee (Jeep) driven by the applicant Sean Weatherill, and an ambulance operated by the respondent Provincial Health Services Authority DBA BC Ambulance (BC Ambulance). The ambulance was driven by the respondent Kelvin Bun Li. The Jeep was owned by the applicant Ellen Gayle Weatherill, who was not present at the time of the collision.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Mr. Weatherill was 100% at fault for the collision.
4. The applicants are represented by Mr. Weatherill. They seek an order that ICBC's liability decision be reversed, and that BC Ambulance be held at least 75% responsible for the collision. They also seek a \$300 refund of increased insurance premiums, a refund of the \$300 insurance deductible, and \$275 for work Mr. Weatherill missed due to the accident.
5. The respondents are all represented by an ICBC employee, Tom Siu. Mr. Siu says Mr. Weatherill was 100% responsible for the accident, as he did not surrender the right of way to the ambulance.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the

documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

### ***Small Claims Limit***

10. I have considered whether the applicants' claims fit within the tribunal's \$5,000 limit on monetary claims. I find that they do. The evidence before me indicates that both vehicles involved in the May 27, 2016 collision sustained damage, and the 1 year old Jeep Cherokee was written off as a total loss. This means the actual vehicle damage was well over \$5,000. However, the dispute involves an insurance claim, not a claim for the direct cost of vehicle replacement or repairs. The applicants' monetary loss resulting from ICBC's liability assessment is difficult to quantify, as it may result in increased insurance premiums for several years in the future. However, I find that the best evidence indicates that these increases, combined with Mr. Weatherills' claim of \$275 for missed work, will not exceed \$5,000. I also note that ICBC has not raised an objection to the tribunal's jurisdiction. For these reasons, I conclude that the tribunal has jurisdiction to decide this dispute.

## **ISSUES**

11. The issues in this dispute are:

- a. Are the applicants entitled to a re-assessment of Mr. Weatherill's liability for the May 27, 2016 collision, such that he is held less than 25% responsible?
- b. Are the applicants entitled to \$300 as a refund of the ICBC insurance deductible?
- c. Are the applicants entitled to \$300 as a refund of increased ICBC premiums?
- d. Is Mr. Weatherill entitled to \$275 as compensation for work missed due to the collision?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The applicants say ICBC failed in its duty to assess Mr. Weatherill's liability under the insurance contract. For the reasons that follow, I find the applicants have not proved their claim.
14. The parties agree that the collision occurred at a busy intersection in Richmond, BC, on the morning of May 27, 2016. Mr. Weatherill, driving the Jeep, entered the intersection travelling eastbound under a green light. The ambulance was travelling northbound, and entered the intersection under a red light. The ambulance struck the Jeep in the intersection, causing it to hit a light post.
15. ICBC says Mr. Weatherill was 100% at fault for the collision, because he failed to yield to the ambulance, which had its lights and sirens on. Mr. Weatherill admits that the lights and sirens were on, but says he was not aware of the ambulance until he was already in the intersection. He says he scanned for hazards before entering the

intersection, but did not see any dangers. He also says he did not hear the ambulance because of the Jeep's sound-proofing, his radio which was playing loudly, and background noise.

16. Mr. Weatherill says that when he became aware of the ambulance, he "immediately sped up because of the impending collision." Mr. Weatherill says he could not stop because he would have "locked up" his brakes, and "likely been in a T-bone situation." He also says it would have been dangerous to stop suddenly in the intersection because it would have caused rear-end accidents.

17. Section 122(1) of the *Motor Vehicle Act* (MVA) says the driver of an emergency vehicle may exceed the speed limit and may proceed past a red light without stopping. Section 122(4) says that an emergency vehicle driver exercising these privileges must drive with due regard for safety, having regard to all the circumstances of the case, including the following:

- a. the nature, condition and use of the highway;
- b. the amount of traffic that is on, or might reasonably be expected to be on, the highway;
- c. the nature of the use being made of the emergency vehicle at the time.

18. Thus, Mr. Li, the ambulance driver, was not necessarily at fault for entering the intersection on a red light.

19. Section 177 of the MVA states as follows:

On the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light, except when otherwise directed by a peace officer, a driver must yield the right of way, and immediately drive to a position parallel to and as close as possible to the nearest edge or curb of the roadway, clear of an intersection, and stop and remain in that position until the emergency vehicle has passed.

20. The ICBC adjuster relied on these provisions of the MVA, and issued a June 14, 2016 letter stating that Mr. Weatherill was 100% responsible for the collision. The adjuster wrote that 2 witnesses confirmed that the ambulance had its lights and sirens on before it reached the intersection, and that it slowed before entering the intersection. The adjuster cited section 177 of the MVA, and concluded that Mr. Weatherill was at fault because he failed to yield to the ambulance.
21. The applicants appealed the adjuster's decision. An ICBC arbiter then conducted an assessment, and confirmed that Mr. Weatherill was 100% at fault. The arbiter reasoned that under section 177 of the MVA, the onus was on the applicants to prove that the ambulance driver was negligent, and they had not done so.
22. The arbiter accepted the witness statements indicating that the ambulance's lights and sirens were activated, and that Mr. Weatherill passed a stopped car in order to enter the intersection. The arbiter said it would have been reasonable for Mr. Weatherill to slow down and stop when he saw the approaching ambulance, and that Mr. Weatherill did not provide a reasonable explanation for why he instead kept moving and sped up. The arbiter concluded that since Mr. Weatherill did not prove that the ambulance driver was negligent, and did not comply with section 177 by yielding to the ambulance, he was solely at fault for the collision.
23. Based on the evidence before me, I agree with the ICBC arbiter's decision that Mr. Weatherill was 100% liable for the accident. It is undisputed that the ambulance's lights and sirens were on. While Mr. Weatherill says he did not hear or see them until he was already intersection, that did not remove his duty to yield the right of way, as required under MVA section 177. If his loud radio impaired his ability to hear and comply with section 177, as he argues, this is solely his fault. For that reason, I reject his argument that BC Ambulance ought to have installed a different type of siren.
24. Mr. Weatherill says the ambulance driver failed to stop before entering the intersection. However, under section 122(1)(b) of the MVA, the ambulance was not required to stop. Mr. Weatherill also argues that since the ambulance was changing

between 2 types of sirens as it drove, this could have led to a gap between sounds as it approaching the intersection. However, I find the evidence does not support this conclusion. Two independent witnesses, plus the ambulance driver and the ambulance attendant, confirmed that the sirens were running as it approached the intersection. I also note that all 4 witnesses confirmed that the ambulance slowed before entering the intersection. Based on that evidence, I do not accept Mr. Weatherill's argument that the ambulance was travelling too fast and should have been able to brake to avoid the collision.

25. Mr. Weatherill says he successfully disputed the traffic ticket he was issued for violating section 177. He did not provide evidence to prove this assertion. Even if he did, I find it is not determinative of this dispute because he admits that he noticed the ambulances' lights and sirens just before the collision, and that he then chose to speed up rather than stop. While Mr. Weatherill made a judgment in the moment that it would be better to speed up and try to avoid the collision, this is not permitted under section 177. Section 177 says that when approached by an emergency vehicle with lights or sirens on, a driver must yield the right of way. This is not optional. By proceeding through the intersection and not stopping, regardless of the reason, Mr. Weatherill failed to yield.
26. For all of these reasons, I find the ICBC liability assessment was correct, and Mr. Weatherill was 100% at fault for the collision. For this reason, I dismiss all of the applicants' claims. I would not have ordered reimbursement for time lost from work in any event, as the applicants provided no evidence or particulars to support that claim.
27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful and so I dismiss their claim for reimbursement of tribunal fees. The respondents did not pay any fees and there were no dispute-related expenses claimed by any party.

**ORDER**

28. I dismiss the applicants' claims and this dispute.

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Kate Campbell, Tribunal Member