



# Civil Resolution Tribunal

Date Issued: July 26, 2019

File: SC-2018-008496

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harper v. Insurance Corporation of British Columbia (ICBC) et al*, 2019  
BCCRT 912

B E T W E E N :

Brian Harper

**APPLICANT**

A N D :

Insurance Corporation of British Columbia (ICBC) and ALLISON  
KRISTINE GASKELL

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This is a dispute about liability for a motor vehicle accident.
2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), found the applicant Brian Harper was 100% liable for a December 11, 2016 motor vehicle

collision with the respondent Allison Kristine Gaskell. Mr. Harper says ICBC failed to adequately investigate the collision and made an unreasonable decision to assess liability against him.

3. Mr. Harper wants a refund of his \$300 deductible, \$542 he says ICBC wrongly withheld from his insurance refund, and that his ICBC insurance history be cleared of this incident.
4. Mr. Harper says he was turning left on a green arrow, when a car driven by Ms. Gaskell ran a red light and hit him. Mr. Harper says Ms. Gaskell is liable for the collision.
5. ICBC says that the light was green for Ms. Gaskell when she approached the intersection, in centre lane 2 of 3, but that it turned amber and she did not have enough time to stop safely. Ms. Gaskell then proceeded through the intersection and Mr. Harper turned left into her path of travel.
6. The applicant is self-represented. ICBC is represented by adjuster Carol Clarke. Ms. Gaskell adopts the position of ICBC and is also represented by Ms. Clarke.

## **JURISDICTION AND PROCEDURE**

7. 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*. 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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did ICBC reasonably assess 100% liability against Mr. Harper?
  - b. To what extent, if any, is Mr. Harper entitled to his requested remedies?

## **EVIDENCE AND ANALYSIS**

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
13. Mr. Harper seeks an order overturning ICBC's internal liability assessment and a refund of his insurance deductible. The central issue is whether ICBC acted "properly or reasonably" in administratively assigning 100% responsibility to the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).

14. ICBC owes the applicant a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 33, 55 and 93). As noted in the Continuing Legal Education Society of BC's '*BC Motor Vehicle Accident Claims Practice Manual*', an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information" (see: *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
15. On December 11, 2016, at around 11:30 a.m. Mr. Harper was turning left on a green left-turn arrow at the intersection of Highway 1 and 10<sup>th</sup> Street southwest in Salmon Arm, BC.
16. Mr. Harper says that, as he turned left to proceed south on 10<sup>th</sup> Avenue southwest, Ms. Gaskell's vehicle, travelling eastbound on Highway 1 in the inside curb lane, failed to stop at its red light, colliding with his car.
17. In his statement to ICBC, Mr. Harper said he had a green arrow light upon entering the intersection, which changed to amber as he turned. His wife, AH, who was in passenger seat of his car at the time of the collision, made the same observation.
18. ICBC says Ms. Gaskell had an amber light, not red, when she entered the intersection.
19. RCMP did not attend at the scene of the collision. Mr. Harper says his car suffered extensive damage and was written off. There were no independent witnesses to the collision.
20. Mr. Harper relies on a video that he says shows the position of traffic when west-bound traffic turns left onto 10<sup>th</sup> St. southwest. Mr. Harper says this video shows a red light for east bound traffic, meaning the east bound vehicle that hit his car failed to stop at the red light.

21. I agree with Mr. Harper's interpretation of the video evidence about how the traffic signals work in the intersection. The video proves that, if the green or amber arrow for left turning traffic from Highway 1 to proceed sought on 10<sup>th</sup> avenue southwest is illuminated, the traffic signal for eastbound traffic on Highway 1 is red.
22. That is, because the left turning traffic can only proceed on a left arrow that is green or yellow, the opposing traffic is stopped during this signal. This is different than a left turn where there is no green arrow signal, where a car may turn left in front of oncoming traffic, that itself has a green light, if there is safe space to do so.
23. However, if Mr. Harper turned very late on his left arrow, once it was no longer illuminated at all, the light for oncoming traffic could have been green.
24. Section 174 of the *Motor Vehicle Act* (MVA) applies here. It says that when a driver intends to turn left, the driver must yield to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal, the driver may turn left and the traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.
25. In *Raie v. Thorpe* (1963), 1963 CanLII 885 (BCCA), Tysoe J.A. wrote that the determinative point in time, also called the *punctum temporis*, for assessing the question of immediate hazard and right of way, arises the moment before the driver proposing to turn left commences the turn, and not at an earlier point.
26. The onus lies on the turning driver and thus the description "servient driver" is given to the turning driver and "dominant driver" to the driver going straight through the intersection.
27. In *Henry v. Bennett*, 2011 BCSC 1254 (CanLII), the BC Supreme Court affirmed that left turning drivers are not "entitled to proceed blindly on the assumption that oncoming drivers will obey the rules of the road" (at para 72). "However, a left turning driver, acting reasonably, is entitled to rely on the assumption that the approaching driver will obey the rules of the road and will not proceed through the

intersection deep into an amber light, or on a red light, unless there is reason to know otherwise.” (see *Yamakami v. Whittey*, 2012 BCSC 57 at paragraph 38)

28. The decision time is the moment before the left turning driver, here Mr. Harper, commences his turn.
29. The evidence from Mr. Harper and his passenger is that he started his left turn while the flashing green light was on, and it turned amber while he was making his turn. I prefer Mr. Harper’s evidence that the light was in this part of the cycle, where the oncoming light would have been red, because it is supported by his wife’s evidence, whereas Ms. Gaskell’s evidence is not corroborated. While Ms. Harper is not a disinterested party, she is the only non-driver witness to the collision.
30. My finding is also consistent with Ms. Gaskell being unable to remember whether there were any vehicles in the lanes to her right or left, whereas Mr. Harper and his wife both recalled a semi that was stopped beside her. Based on this evidence, I find that Mr. Harper was paying closer attention to what was happening in the intersection than was Ms. Gaskell.
31. At the time he made his decision to proceed, I find the intersection was clear and Mr. Harper had the right of way. The situation changed part way through the turn, with Ms. Gaskell’s car entering the intersection from the east.
32. I find that Ms. Gaskell was proceeding at 10 km over the posted 50 km speed limit. I base this on what she told Mr. Harper at the accident scene.
33. Ms. Harper said that Ms. Gaskell told her that the accident was her fault, and that she tried to stop but could not, due to slippery conditions. In evidence here, Ms. Gaskell did not provide a first-hand statement to contest this account. Her evidence was introduced in the form of an email summary prepared by an ICBC employee, which did not address whether conditions were slippery.

34. I find that Ms. Gaskell had not acquired a dominant position at the point in time of Mr. Harper's turn and was proceeding too quickly to stop in time to avoid a collision at the time, based on the summary of her evidence provided by ICBC.
35. I find that Mr. Harper had a green arrow or amber arrow at the time of his turn, it follows that the eastbound light was red when Ms. Gaskell came through it.
36. Under section 129 of the MVA, when a red light alone is exhibited at an intersection, the driver facing it must stop before entering the intersection.
37. The evidence and submissions before me show that ICBC did not fully consider the timing of the signal changes at the intersection in reaching its determination. The timing of the signal changes shows how unlikely it was that Ms. Gaskell could have had a green light when weighed against statements from Mr. and Mrs. Harper. I disagree with ICBC that the applicant should have been held 100% liable. On balance, given the facts and my findings above, I find Ms. Gaskell was 100% responsible for the MVA.
38. Turning to the remedy sought, after the car was written off, Mr. Harper cancelled his insurance policy on the car. He says he requested a \$728 refund of his remaining annual insurance, but ICBC only refunded him \$186. ICBC says that the refund was a prorated amount because Mr. Harper cancelled his insurance on July 2, 2017, meaning he received the benefit of the insurance policy from October 27, 2016 to July 2, 2017. This is consistent with the ICBC application for cancellation filed in evidence. As such, I make no order for ICBC to refund Mr. Harper the premium paid for his insurance.
39. Mr. Harper also asks for a refund of his \$300 deductible. Given my findings above about liability, I find ICBC must refund him the deductible. I order ICBC to refund Mr. Harper's deductible for this collision within 30 days.
40. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. I find Mr. Harper is entitled to reimbursement of \$125 in tribunal fees and \$11.34 in dispute-related expenses for registered mail costs to deliver the Dispute Notice, which I find reasonable.

## **ORDERS**

41. I order that Ms. Gaskell is 100% liable for the December 11, 2016 MVA.
42. Within 30 days of the date of this decision, I order ICBC to pay Mr. Harper a total of \$445.68, broken down as follows:
  - a. \$300 as a refund for the insurance deductible,
  - b. \$9.34 in pre-judgment interest under the *Court Order Interest Act* from a month after the collision, January 11, 2017, to present, and
  - c. \$136.34 for \$125 in tribunal fees and \$11.34 for dispute-related expenses.
43. The applicant is entitled to post-judgment interest, as applicable.
44. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.



45. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Julie K. Gibson, Tribunal Member