



# Civil Resolution Tribunal

Date Issued: December 11, 2019

File: SC-2019-005078

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grisley v. ICBC*, 2019 BCCRT 1392

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

JANE GRISLEY

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA, Cindy Edmondson, and Brandon Edmondson

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This is a small claims dispute about a motor vehicle collision that occurred on July 28, 2017 (collision). The applicant, Jane Grisley, rear-ended a 2003 Pontiac Sunfire driven by Brandon Edmondson and owned by Cindy Edmondson, a passenger

(together, the Edmondsons). The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that the applicant was 100% at fault for the collision. Liability for the collision is not in dispute.

2. The applicant says that the Edmondsons made a fraudulent claim and that ICBC failed to properly investigate the claim. Specifically, she says that the collision did not cause the vehicle damage or personal injuries that the Edmondsons claimed. The applicant seeks \$5,000 to cover her increased insurance premiums over the next 3 years, which she says will amount to more than \$6,000. She also seeks an order that her insurance premiums will not increase.
3. ICBC says it is not a proper party to this dispute because the claim is for “losses alleged to have occurred as a result of the alleged negligence of the Motor Vehicle Accident.”
4. The applicant is self-represented. The Edmondsons and ICBC are represented by an ICBC employee, Colleen Souveryn.

## **JURISDICTION AND PROCEDURE**

5. 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* (CRTA). 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.
6. The tribunal 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 each other’s credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to

be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.
8. 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 CRTA:
  - 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.

## **ISSUE**

9. The issue in this dispute is whether the applicant has established that the Edmondsons made a fraudulent claim or that ICBC breached its statutory obligations in investigating the collision, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

### ***ICBC as respondent***

11. I will first address the issue of whether ICBC is a proper respondent. I agree with ICBC that the applicant's allegation of fraud amounts to a tort claim against the Edmondsons. However, the applicant also alleges an improper investigation by ICBC, so I find that ICBC is properly named as a respondent to this dispute: *Singh v. McHatten*, 2012 BCCA 286.

### ***Accident claim and investigation***

12. The undisputed evidence is that on July 27, 2017, the Edmondsons were driving east on River Road in Richmond, yielding to enter Haney Bypass, when the applicant rear-ended their vehicle. The applicant's front bumper hit the Edmondsons' rear bumper. The applicant and the Edmondsons exchanged information. There were no witnesses and no emergency vehicles attended.

13. On July 30, 2017, ICBC sent the applicant a 'liability letter', which is not in evidence. ICBC says the letter advised the applicant of its determination that she was 100% liable for the collision based on section 162 of the *Motor Vehicle Act*. The relevant part of that section says that a driver must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent. As noted above, the applicant does not dispute ICBC's assessment of liability.

14. A November 20, 2017 estimate put the cost to repair Ms. Edmondson's vehicle at \$1,584.77. Together with loss of use and other costs, the repair cost exceeded the vehicle's market value. ICBC therefore determined that Ms. Edmondson's vehicle was a 'total loss'. Also, the Edmondsons each made personal injury claims arising from the collision. The details of those claims are not in evidence.

15. The applicant disputes the Edmondsons' claims of personal injury and vehicle damage. She says that her vehicle did not make contact hard enough to cause bodily injury. She also says that her vehicle sustained no damage and required no repairs, and she had no injury. While I accept that the applicant's Mazda was not

damaged, this does not necessarily mean that Ms. Edmondson's Sunfire was not damaged. Vehicles are made of different materials and have different vulnerabilities to impact. Similarly, it is well-established that personal injuries cannot be measured by the extent of physical damage to vehicles: see *Gordon v. Palmer*, 1993 CanLII 1318 (BC SC).

16. The applicant says that Ms. Edmondson's vehicle had pre-existing damage. A photo that the applicant took immediately after the collision shows the rear of Ms. Edmondson's vehicle. The photo shows a bungee cord connecting the trunk to somewhere under the car. The applicant argues that the presence of the bungee cord indicates that the trunk was misaligned and would not stay closed.
17. The applicant also says that Ms. Edmondson's vehicle may have been damaged between the date of the collision and the date of the repair estimate. The repair estimate included replacing the left and right rear combination lamp assemblies, repairing the back-up/licence lamp assembly, and repairing and refinishing the rear bumper cover. The applicant says that her photo shows that the left and right rear combination lamp assemblies and the back-up/licence lamp assembly are intact with no damage. However, it is not clear from the photo whether any of the lamps are functional or not.
18. The applicant asks, if the rear lamps were not functional, why did Ms. Edmondson wait nearly 5 months to obtain a repair estimate? However, there is no evidence about whether Ms. Edmondson's vehicle was driven in the intervening period. There is also no evidence before me that the vehicle was subsequently damaged.
19. The applicant also says that ICBC's November 15, 2017 determination that Ms. Edmondson's vehicle was a total loss pre-dated the November 20, 2017 repair estimate. However, I find that she misunderstands the evidence. Although the estimate, near the top, bears the date November 20, 2017, it also, near the bottom, bears the estimate recall number "11/14/2017". As well, the attached certificate of repair is not signed, so I am satisfied that the copy of the estimate in evidence was

a reprint and the original estimate was prepared on or before November 14, before ICBC's determination that the car was a total loss.

20. The applicant says that if ICBC had done a thorough investigation and contacted her and inspected her car, it would have reached a different conclusion about the Edmondsons' claims. She says ICBC did not ask for the photo evidence that she reported on her claim.
21. ICBC submitted its July 31, 2017 internal notes about the collision. In those notes, the assigned adjuster noted that the applicant said the damage was very minor, and there was previous unrelated damage to Ms. Edmondson's vehicle. These are the same arguments the applicant makes in this dispute. I am satisfied that ICBC was aware of the applicant's position when conducting its investigation.
22. In submissions, ICBC says it questioned both Edmondsons as part of its investigation. It says that Ms. Edmondson advised that she was not aware of any prior damage on the rear bumper, or a bungee cord on the rear bumper. It says that Mr. Edmondson also stated that he was not aware of a bungee cord on the rear bumper.
23. The applicant's photo clearly contradicts the Edmondsons' recollection about the presence of a bungee cord. However, I am not persuaded that, had ICBC seen the photo of Ms. Edmondson's vehicle with the bungee cord, its conclusion that the vehicle was a total loss would have been any different. The damage noted on the estimate relates to the lamps and the repair and refinishing of the rear bumper. There is no issue noted on the estimate about trunk alignment or anything that the applicant has linked to the presence of a bungee cord. Therefore, I am not persuaded that the bungee cord is evidence that the Edmondsons made a fraudulent claim as the applicant alleges.
24. In *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283, the BC Supreme Court stated that an insurer is "not expected to investigate a claim with the skill and forensic proficiency of a detective" and it is not required "to assess the

collected information using the rigorous standards employed by a judge”. Instead, the insurer’s duty is to “bring reasonable diligence, fairness, an appropriate level of skill, thoroughness and objectivity to the investigation, and the assessment of the collected information”. The applicant has not provided sufficient evidence that ICBC failed to meet that duty.

25. Even if I had concluded otherwise, I would dismiss the applicant’s claims for other reasons. I find that she has not substantiated her claim about increased premiums. She provided no statements showing her premium rates, and did not say what they were before or after the collision. Moreover, keeping in mind that she did not dispute liability, she did not explain how the determination that Ms. Edmondson’s vehicle was a total loss or that the Edmondsons suffered injuries affected her premiums.
26. I find that the applicant has not proven that the Edmondsons made a fraudulent claim or that ICBC failed to reasonably investigate the incident. She has also not proven her losses. I dismiss the applicant’s claims.
27. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss her claim for tribunal fees. None of the parties claimed expenses.

## **ORDER**

28. I dismiss the applicant’s claims and this dispute.

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Micah Carmody, Tribunal Member