



# Civil Resolution Tribunal

Date Issued: December 11, 2019

File: SC-2019-004964

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khan v. ICBC*, 2019 BCCRT 1394

BETWEEN:

ARIF KHAN

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and Dawson  
Pelletier

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on July 6, 2018 (accident). The applicant, Arif Khan, was driving his vehicle northbound on 57A Street in Delta, British Columbia, when his vehicle collided with a vehicle owned and driven by the defendant, Dawson Pelletier.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that the applicant and Mr. Pelletier were each 50% responsible for the accident.
3. The applicant says ICBC should have found Mr. Pelletier 100% responsible for the collision, and that ICBC breached its statutory obligations in investigating the accident and assigning fault.
4. ICBC says it is not a proper party to the claim and that it assigned fault according to the provisions of the *Motor Vehicle Act* (MVA).
5. The applicant seeks \$3,000 in damages, which he says is for his increase in insurance rates, his deductible, and impact on his driving record.
6. The applicant is self-represented. The respondents are represented by an ICBC adjuster.

## **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* (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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 British

Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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 by 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.
11. Although ICBC argues it is not a proper party to the claim, I disagree. The applicant alleges ICBC was negligent in investigating the accident and assigning fault, which is a claim against ICBC as his insurer. I find ICBC is a properly named party.

## **ISSUES**

12. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
  - b. Who is liable for the accident? If not the applicant, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. 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.

***Did ICBC breach its statutory obligations in investigating the accident and assessing fault?***

14. As noted above, the applicant seeks an order that Mr. Pelletier is 100% responsible for the accident, and compensation for increased insurance rates, his deductible, and for the impact on his driving record. Although the applicant claims \$3,000 in total, he did not break down that amount for the various damages he seeks.
15. The applicant says that ICBC erred in assigning him 50% responsibility and that ICBC acted unreasonably in weighing the evidence. Additionally, the applicant says he believes he was assessed 50% of the blame because part of his insurance is through a third party insurer, not ICBC.
16. To succeed in this claim, the applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted “properly or reasonably” in administratively assigning responsibility equally between the applicant and Mr. Pelletier (see: *Singh v. McHatten*, 2012 BCCA 286).
17. 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 in its decision about whether to pay the claim (see: *Bhasin v. Hyrnew*, 2014 SCC 71 at paragraphs 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).

18. The basis of the applicant's claim is that he says Mr. Pelletier attempted to pass him on the left, as the applicant was intending to make a left turn, and therefore the collision occurred. There is no evidence before me about the existence of any independent witnesses or dash cam footage. The applicant says he had turned on his left turn signal well before starting his left turn. In contrast, Mr. Pelletier said he did not see any turn signal when he attempted to pass the applicant.
19. Although I acknowledge the applicant disagrees with ICBC's fault assessment, I find the applicant has not shown that ICBC breached its statutory obligations or its contract of insurance. Further, the applicant provided no evidence in support of his submission that he was assigned fault only because he has separate third party insurance coverage. Therefore, I find ICBC did not breach its statutory obligations or contract of insurance in investigating the accident and assigning fault. I dismiss this claim.
20. I turn now to my assessment of liability.

***Who is liable for the accident?***

21. The following facts are undisputed:
  - a. On July 6, 2018, at approximately 11:30 pm, the applicant was traveling northbound on 57A Street, intending to turn left mid-block, into his home's driveway.
  - b. At that time, Mr. Pelletier was in a vehicle behind the applicant, also traveling northbound on 57A Street.
  - c. As the applicant made a left turn into his driveway, Mr. Pelletier's vehicle attempted to pass the applicant on the left, and the two vehicles collided.
  - d. The applicant's front driver's side collided with Mr. Pelletier's passenger side.
22. The applicant submits he turned on his signal to make a left turn into his driveway, and denies that he failed to shoulder check to his left side before starting his turn.

The applicant also denies he swung his vehicle to the right, when his intention was to make a left turn. The applicant says Mr. Pelletier is fully responsible for the accident because he failed to safely pass on the left.

23. In their Dispute Responses, the respondents say the applicant pulled over to the right side of 57A Street, so Mr. Pelletier believed the applicant was turning right, and therefore went to pass him on the left. Mr. Pelletier did not provide any submissions or evidence, though I note ICBC is defending the claim on his behalf.
24. In support of its position, ICBC submitted a brief document with a short summary of both the applicant's and Mr. Pelletier's statements. Mr. Pelletier's statement says he was on an unknown street following behind the applicant and that the applicant pulled over to the right without signalling. Because Mr. Pelletier believed the applicant was turning right into a driveway, he attempted to pass the applicant on the left and the collision occurred. No other statement was provided.
25. I do not accept the "statement" as produced by the respondents for the following reasons. First, the statement has clearly been taken from another document and placed into a new, shorter document. It is unclear whether the statement was reproduced as is, or was altered in some way. ICBC did not explain why the statement was removed, and the source document is not in evidence. Further, the statement does not indicate when it was given, how it was given, or to whom. As a result, I give the statement reduced weight.
26. Therefore, I accept the applicant's version of events. That is, the applicant turned on his left turn signal and then started his turn, when Mr. Pelletier attempted to pass him on the left.
27. Section 159 of the MVA says that a driver must not drive to the left side of a road to overtake or pass a vehicle unless the driver can do so in safety. I find Mr. Pelletier was negligent when he attempted to pass the applicant when the applicant indicated his intention to turn left. This finding of negligence is also consistent with Mr. Pelletier's version of events, that is, that although the applicant swung to the right, he

had not signalled any intention to do so. Therefore, even if I had accepted Mr. Pelletier's version of events, I still would have found he was negligent in attempting to overtake the applicant's vehicle when it was unclear to Mr. Pelletier what the applicant's intentions were. I find Mr. Pelletier is 100% at fault for the accident.

28. I turn then to the appropriate remedy. As noted above, the applicant claims \$3,000 for increased insurance rates, his deductible, and the impact on his driving record. The applicant is also insured through a third party insurer who is not named in this dispute. ICBC submits, and the applicant does not dispute, that the applicant has not paid any amount towards an ICBC deductible. It is unclear to me whether the applicant paid a deductible to his third party insurer. As no money was paid to ICBC, and no monetary amount has been explained, I decline to order ICBC to reimburse any deductible. As I found Mr. Pelletier 100% responsible for the accident, I would have ordered Mr. Pelletier to reimburse the applicant's paid deductible, but as there is no evidence that any deductible has been paid, I decline to make such an order.
29. ICBC also submits the applicant's insurance policy with it has not been affected by a premium increase. The applicant also says he is unsure of what any increase would amount to, but that the claimed \$3,000 is an estimate for his expenses in having to "run around" and get estimates.
30. I dismiss the applicant's requested \$3,000 for unquantified increased insurance rates and the impact to his driving record. I dismiss that claim because the applicant failed to produce any evidence in support of a claim for increased premiums and it is unclear whether the claim is for an actual paid increase in rates, or some future increase. It is also unclear whether the applicant's ICBC rates will be affected some time in the future. In any event, under its small claims jurisdiction, the tribunal generally does not make "prospective orders", or orders about things that may occur in the future and have not yet happened. In summary, I find the applicant has not proven on a balance of probabilities that he is entitled to compensation for increased insurance rates or the effect on his driving record. I also find the applicant is not entitled to compensation

for “running around” to get insurance estimates, as he provided no evidence in support.

## **ORDER**

31. I dismiss the applicant’s claims, as the claimed damages are unproven.

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Andrea Ritchie, Vice Chair