



# Civil Resolution Tribunal

Date Issued: April 16, 2020

File: SC-2019-010224

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wells v. ICBC*, 2020 BCCRT 413

**BETWEEN:**

LUCAS WELLS

**APPLICANT**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This small claims dispute is about windshield damage to a vehicle. On September 23, 2019, the applicant, Lucas Wells, hit a bear. The respondent, the Insurance

Corporation of British Columbia, says the windshield damage was caused by a separate incident involving a rock hitting the windshield, and not by the bear collision. So, the respondent charged the applicant two \$200 deductibles to fix the windshield and the other damage.

2. The applicant says that the respondent did not investigate the accident impartially and that it was biased. He says that the respondent's decision that there were two separate incidents was incorrect. The applicant requests reimbursement of the \$200 deductibles for the windshield damage. The applicant represents himself.
3. The respondent says it properly investigated and determined that the windshield damage was likely caused by a rock chip and was unrelated to the accident involving the bear. Therefore, the applicant had to pay two \$200 deductibles. The respondent is represented by an organizational contact.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the respondent breach its statutory obligations in investigating the accident and determining that there were two separate incidents damaging the applicant's vehicle?
  - b. Did the impact with the bear cause the windshield damage and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove his claim on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

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

11. To succeed against the respondent, the applicant must prove on a balance of probabilities that the respondent breached its statutory obligations or its contract of insurance, or both. The question is whether the respondent acted “properly or reasonably” in administratively deciding that the car’s damage was caused by two separate incidents. (see: *Singh v. McHatten*, 2012 BCCA 286).
12. The respondent owes the applicant a duty of good faith, which requires the respondent 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. 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).
13. I turn to the relevant facts. On September 24, 2019, the applicant told the respondent that after he dropped a friend off at home, he struck a bear. On October 7, 2019 the applicant told the respondent that he had discovered more damage to his vehicle and the sunroof was cracked and his CD player did not work anymore. The estimator went to the applicant’s home to view the vehicle and take pictures on October 16, 2019. The respondent’s notes show that the applicant said that the bear did not make impact with the windshield. The applicant does not dispute that the bear did not hit the windshield. According to the respondent’s notes, the estimator told the applicant that windshield damage was consistent with a rock impact.
14. The applicant disagreed with the estimator’s assessment and requested a manager consider the claim. The manager explained that the windshield crack had a rock

chip and cracks radiating out from each side of the chip. He noted that the windshield showed a small impact area and was definitely not caused by an animal impact. According to the respondent's notes, the applicant again stated that the bear only made contact with the front end of his vehicle but that he thought the force of the impact caused the windshield damage. The applicant then stated that he has killed bears and they have rocks in their fur which could have come off this bear and hit his windshield. The manager's notes also indicate that he reviewed the photos of the windshield and that the evidence of air pocketing along the windshield crack were a result of age.

15. The applicant then requested his claim be considered by the respondent's fairness commission. The fairness commissioner referred the claim to T, a customer relations advisor. On October 28, 2019, the applicant emailed information to the respondent's representative, T, he had not previously provided to the manager. The applicant said that when the estimator came to his house, the estimator said he did not know what caused the windshield damage but that it was not the bear. The applicant said that his indigenous neighbour then came over and the estimator looked at him and said that "maybe someone smashed it with their fist." In his submissions the applicant indicates that this statement coupled with his neighbour's arrival was racist. The applicant also stated that the windshield was "smashed from the inside" and not the outside suggesting it could not have been someone hitting the car or a rock chip.
16. T reviewed all the evidence summarized above. T also noted that an operations manager reviewed the claim on October 22, 2019 who also agreed that the windshield damage was not connected to the animal impact accident. T stated that therefore the estimator and two managers had reviewed the claim and found the windshield damage was not caused by hitting the bear.
17. I note that the applicant did not provide a statement from his neighbour to the respondent or to the tribunal that the estimator made a racist statement. He also did not mention that this occurred to the first manager that reviewed his claim. I find the

evidence unconvincing that this statement occurred. Therefore, the respondent did not act improperly or in a biased manner by not pursuing this allegation that the applicant first brought up in his submission to the fairness commission.

18. Given the overall evidence, I find that the respondent did not breach its statutory obligations or its contract of insurance. The applicant has not proven ICBC's investigation was unreasonable. The respondent sent an estimator to view the car. It also involved multiple levels of review in determining whether the windshield damage could have been caused by the impact with the bear. I find the respondent acted reasonably in administratively deciding that the damage could not have been caused by the accident involving the bear.
19. Having determined that the respondent acted reasonably in its examination of the accident, I turn now to my assessment of whether the bear impact caused the windshield damage.

***Did the impact with the bear cause the windshield damage and if so, what is the appropriate remedy?***

20. I first note that I do not accept the estimator's evidence as expert evidence under the tribunal's rules as their qualifications are not before me. However, I do accept their evidence about the likely cause of the vehicle's damage, given their role and experience. Notably, I have no contrary estimator or expert evidence before me from the applicant.
21. For this tribunal dispute, the applicant submitted in evidence a witness statement from a person, D, the applicant says he dropped off before he hit the bear. D's January 30, 2020 statement indicates that the front windshield was not broken on September 23, 2019 but was the next day. The applicant has not explained why he did not obtain this statement when he was going through the levels of internal review with the respondent. I do not place weight on this evidence. I find it more likely that if D had this to say, the applicant would have provided D's statement earlier.

22. I also find that the applicant has provided inconsistent evidence about how the windshield was damaged. He has claimed that it was the car's impact with the bear, that the bear had rocks in its fur which hit the windshield, and that something from inside his car hit the windshield causing the damage. I note that the applicant has not described what was inside the vehicle that hit the windshield. He also did not mention this when he initially reported the claim. I find that the applicant's multiple descriptions of how the windshield was damaged do not ring true.
23. As noted, the burden is on the applicant to prove on a balance of probabilities that the impact with the bear caused the windshield damage. I find that he has not done so. As a result, I find the windshield damage was caused by an incident separate from the bear collision. Therefore, the respondent was entitled to charge the applicant two deductibles to repair the vehicle's damage.

## **TRIBUNAL FEES AND EXPENSES**

24. 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. Here the applicant would not be entitled to reimbursement of his tribunal fees as he was not successful. The applicant also requested \$100 for travel, time, and gas. I note that even if the applicant had been successful, I would not have awarded these amounts because the applicant has not provided proof of these expenditures. Further, under the tribunal rules, the tribunal does not normally reimburse a party for time spent on the dispute.

## **ORDER**

25. I dismiss the applicant's claims and this dispute.

---

Kathleen Mell, Tribunal Member