



# Civil Resolution Tribunal

Date Issued: May 6, 2020

File: SC-2020-000821

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Musa v. ICBC*, 2020 BCCRT 495

BETWEEN:

LUCAS MUSA

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and MAX  
LEONARD WRIXON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on January 7, 2020.

2. The applicant, Lucas Musa, and the respondent, Max Leonard Wrixon, were each driving eastbound on East Hastings Street in Vancouver, British Columbia, when they were involved in an accident.
3. Mr. Musa says both he and Mr. Wrixon attempted to change lanes into the middle lane of 3 lanes, at the same time, causing the accident. However, Mr. Wrixon says he remained in his lane (the middle lane), and Mr. Musa unsafely changed into his lane from the left lane, causing the accident. It is undisputed the accident was relatively minor. Mr. Musa alleges the damages amounted to “a few scratches” to the vehicles, and did not have his vehicle repaired. A repair estimate for Mr. Wrixon’s vehicle totaled \$2,435.99, but Mr. Musa argues the estimate is excessive and the repairs should not have cost more than \$500.
4. The parties are both insured by the respondent insurer, the Insurance Corporation of British Columbia (ICBC). ICBC internally concluded Mr. Musa was 100% responsible for the accident. Mr. Musa says both he and Mr. Wrixon are each 50% responsible, and that ICBC was negligent in investigating the accident and determining fault. Mr. Musa seeks an ordering declaring ICBC’s liability determination “void”, plus \$300 and “an order to avoid modifying” his future insurance rates.
5. Mr. Musa is self-represented. The respondents are both represented by an ICBC adjuster.

## **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* (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.

7. 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.
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. 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.
10. In its Dispute Response, ICBC argued it is not a proper party to the claim, and that the claim should be against Mr. Wrixon only. I disagree. Mr. Musa alleges ICBC acted unreasonably 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

11. The issues in this dispute are:

- a. Did ICBC breach its statutory obligations 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

12. In a civil claim such as this, the applicant Mr. Musa 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?***

13. As noted above, Mr. Musa says that ICBC did not act fairly or reasonably in assigning fault for the accident. Specifically, he says ICBC believed Mr. Wrixon over him, with no supporting evidence. As a result, Mr. Musa seeks an order overturning ICBC's internal liability assessment and an order preventing his insurance premiums from increasing.

14. To succeed against ICBC, Mr. Musa 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 sole responsibility for the accident against Mr. Musa (see: *Singh v. McHatten*, 2012 BCCA 286).

15. ICBC owes Mr. Musa 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. Hrynew*, 2014 SCC 71 at paragraphs 22, 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: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

16. The basis of Mr. Musa's claim against ICBC is that he says ICBC did not thoroughly investigate the accident. He says ICBC did not ask him for any photographs, that it fixed Mr. Wrixon's car too quickly, therefore "destroying evidence", and that it did not get a proper expert report when determining who was at fault.
17. In contrast, ICBC says it acted reasonably in determining fault based on the two drivers' statements, and that no additional evidence was presented to it. In the circumstances, ICBC says it was left with one driver who denied changing lanes, and Mr. Musa, who admitted to doing so. As a result, it found Mr. Musa solely at fault for changing lanes when it was unsafe to do so.
18. The evidence shows ICBC asked Mr. Musa for any evidence supporting his version of events, and took statements from the involved parties. It is undisputed that no witnesses or dash cam footage were available. Additionally, I recognize Mr. Musa's argument that an expert report would have been helpful in determining the position of the two vehicles at the time of the collision. Although Mr. Musa refers to a third party autobody shop's repair estimate for Mr. Wrixon's vehicle as an insufficient "homemade expert report", I find it is not an expert report, nor was it presented as such. In any event, considering proportionality, I find ICBC acted reasonably in not obtaining an expert report, given the overall value of this dispute and the relatively minor accident.
19. In summary, although I acknowledge Mr. Musa disagrees with ICBC's fault assessment, I find he has not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss this aspect of Mr. Musa's claims.

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

20. For the following reasons, I dismiss Mr. Musa's claims in their entirety. I say this for three reasons. First, Mr. Musa claims for an order declaring ICBC's fault determination "void", which is declaratory relief and is outside the tribunal's jurisdiction. Therefore, I have no ability to award that requested remedy.
21. Second, although Mr. Musa claims \$300, which I infer is for future increased insurance premiums, he did not provide any evidence as to whether or how much his insurance premiums have been or will be impacted. Additionally, Mr. Musa seeks an order preventing any modification to his insurance premiums as a result of the accident. Ordering someone to do something, or to stop doing something, is known as "injunctive relief" and is also outside the tribunal's small claims jurisdiction, except where expressly permitted by section 118 of the CRTA. There is no relevant CRTA provision here that would have permitted me to grant the injunctive relief sought by Mr. Musa.
22. Third, Mr. Musa does not argue that Mr. Wrixon is solely responsible for the accident, but rather says each of them should be held 50% liable. Mr. Musa has not proven that his insurance premiums would be anything different if he were found only 50% liable, instead of 100%. Given the evidence and submissions, I find there is no basis to find him less than 50% liable. As a result, because Mr. Musa has failed to prove any damages, I find I do not need to determine whether Mr. Musa was 100% liable, or whether Mr. Wrixon and Mr. Musa should have shared liability equally, or whether Mr. Wrixon also merged into the middle lane or was already in it. For the reasons above, I dismiss Mr. Musa's claims in their entirety.
23. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Musa was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Neither party claimed dispute-related expenses.

## **ORDER**

24. I order Mr. Musa's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair