



# Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2020-000608

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gibney v. ICBC*, 2020 BCCRT 858

**BETWEEN:**

DIANE GIBNEY

**APPLICANT**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA and KEVIN  
HUGHES

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This small claims dispute is about a motor vehicle accident that occurred on January 23, 2018 in Vancouver. The applicant, Diane Gibney, was northbound on Blenheim Street, and left a stop sign into the West Broadway intersection. She crossed West Broadway and collided with the respondent driver Kevin Hughes who was westbound on West Broadway in the northernmost curb lane.
2. Ms. Gibney has abandoned her original \$5,000 claim for damages and now claims only reimbursement of a \$300 insurance deductible plus fees she paid to the Civil Resolution Tribunal (CRT) for this proceeding. Ms. Gibney says the respondent insurer, Insurance Corporation of British Columbia (ICBC), refused to consider her argument that she was not at fault for the accident. Ms. Gibney also says Mr. Hughes should be held 100% at fault as Ms. Gibney argues she was the dominant driver who had the right of way.
3. The respondents say Ms. Gibney failed to yield the right of way to traffic in an intersection, contrary to section 175 of the *Motor Vehicle Act* (MVA). The respondents say Mr. Hughes' vehicle was an immediate hazard and "there to be seen".
4. Ms. Gibney is self-represented. An ICBC employee represents the respondents.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. 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 Ms. Gibney, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, as the applicant Ms. Gibney bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. As noted above, originally Ms. Gibney claimed \$5,000 in damages, for what she described as illness and headaches and for auto expenses. However, in her later submissions she expressly stated she wanted “a cancellation” of that \$5,000 claim and instead seeks reimbursement of her CRT fees and expenses, plus her

insurance deductible. While Ms. Gibney says she paid a \$300 deductible she provided no evidence of what she paid. Instead, Ms. Gibney provided an excerpt of a repair estimate that said the insurance deductible was waived. Given my ultimate conclusion below, nothing turns on this.

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

12. Ms. Gibney says that there was a “lack of investigation into the accident” and in the end she was “given no consideration”. She says she has been wronged and wants to be exonerated. Ms. Gibney also argues that ICBC did not act fairly or reasonably in assigning fault for the accident.
13. To succeed against ICBC, Ms. Gibney 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 Ms. Gibney (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
14. ICBC owes Ms. Gibney 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).
15. I find there is no evidence before me to conclude ICBC failed to reasonably investigate or consider Ms. Gibney’s position, as she alleges. ICBC took statements from both drivers, and from an independent witness SG, as discussed below. Ms. Gibney does not explain what ICBC should have done differently, other than to

argue ICBC misapplied the MVA and that ICBC should have agreed with her, particularly given her past driving record does not reflect a history of speeding.

16. I acknowledge Ms. Gibney says both Mr. Hughes and SG are lying. However, I find ICBC was entitled to find in Mr. Hughes' favour by relying on SG's evidence that supported Mr. Hughes' account of what happened. Further, the fact that ICBC came to a conclusion Ms. Gibney disagrees with does not mean ICBC acted unreasonably or unfairly.
17. Next, while Ms. Gibney appears to object to ICBC representing Mr. Hughes in this dispute, it is undisputed ICBC is the insurer for both drivers and its representation of Mr. Hughes is provided for in the *Insurance (Vehicle) Act*.
18. In the circumstances, I find Ms. Gibney has not proven ICBC failed to act reasonably in investigating the accident and assigning fault to Ms. Gibney. I find there is no evidence that ICBC did not review all available evidence before it. It would have been preferable that ICBC had determined Mr. Hughes faced a flashing green as opposed to a solid green light, as discussed below. However, I do not find that its belief that Mr. Hughes' light was a solid green substantially impacted the investigation nor would it likely have altered the outcome. As noted, in assessing whether ICBC breached its contractual or statutory obligations as an insurer, the standard in is not perfection.
19. While I acknowledge Ms. Gibney disagrees with ICBC's application of the law and with ICBC's internal fault assessment, I find the evidence shows that ICBC did not breach its statutory obligations or its contract of insurance. Therefore, I dismiss Ms. Gibney's claims against ICBC. I turn then below to my own assessment of who is responsible for the accident.

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

20. I turn first to how the accident happened. The West Broadway and Blenheim Street intersection is controlled by stop signs on Blenheim Street and a pedestrian-controlled light on West Broadway. I find Mr. Hughes was westbound on West

Broadway and when he entered the Blenheim intersection he faced a flashing green light.

21. Ms. Gibney submitted evidence from a Vancouver Community Policing Centre, which said that the West Broadway and Blenheim intersection is controlled by a flashing green light, rather than a solid green light. I accept this independent evidence, even though Mr. Hughes said the light was “solid green for me”. In context, Mr. Hughes’ reference to “solid” may have been to the fact it was green rather than some other colour, as later in his statement he denies the light was amber as he says Ms. Gibney alleged at the time of the accident. In the circumstances, I find nothing turns on Mr. Hughes’ statement that his light was solid green as opposed to flashing green. It is undisputed that no police or ambulance attended and there is no dash cam footage.
22. As discussed further below, Ms. Gibney argues that she had the right of way because she says she was the first person in the intersection.
23. Ms. Gibney says that after she stopped at the northbound stop sign on Blenheim Street, she saw the West Broadway traffic light was red with all West Broadway traffic stopped. She says she then proceeded to carefully cross West Broadway. She was almost through the intersection when she says Mr. Hughes’ westbound vehicle in the curb lane hit her. Ms. Gibney acknowledges at that point Mr. Hughes had a flashing green light but says he should have been proceeding cautiously and prepared to stop, given section 135 of the MVA. More on that below.
24. Mr. Hughes gave ICBC a statement after the accident, and said he was travelling at less than the average speed. I do not accept Ms. Gibney’s speculation that Mr. Hughes was speeding, as the evidence shows she did not see Mr. Hughes’ vehicle until a moment before the collision. Ms. Gibney says she could not see Mr. Hughes behind the wheel of his car just before the collision, and so she argues he was inattentive. Mr. Hughes says he was attentive to traffic flow and so I am left with an evidentiary tie on this point. As Ms. Gibney bears the burden of proof, I find this “inattentive” allegation unproven. In any event, I find the fact Ms. Gibney did not see

Mr. Hughes' car until just before the collision supports a conclusion traffic on West Broadway had resumed and that she was inattentive.

25. Mr. Hughes says Ms. Gibney's vehicle suddenly pulled in front of him, as he approached the green light, and then Ms. Gibney's car collided with his. Mr. Hughes stated that a pedestrian approached him and said he had seen the accident and that Mr. Hughes had a green light. That pedestrian witness was SG, the only witness who came forward, whose evidence confirms Mr. Hughes' account and is discussed below.
26. Shortly after the accident, SG told ICBC that he was sitting in the adjacent McDonald's restaurant on the southwest corner of the intersection and was looking out the window in a north/northeast direction. SG said he saw the West Broadway traffic was stopped and the light was red. SG said that when the traffic light changed from red to green for the West Broadway traffic, he saw vehicles enter the intersection, from both eastbound lanes and in Mr. Hughes' right westbound lane. I note SG just said the light was green, and did not specify solid or flashing. SG said that he then saw a fast moving vehicle in the intersection travelling north, which was Ms. Gibney, which he says "shot through" the intersection at a high rate of speed. SG said due to his seat location in the restaurant he had not seen this northbound vehicle at the stop sign. However, SG said that given the northbound vehicle's speed, he did not believe the vehicle could have first been stopped at the stop sign. SG said he did not know either Ms. Gibney or Mr. Hughes, which I accept as there no evidence otherwise. SG gave a similar signed statement on February 26, 2020, although in this latter statement SG could not recall some of the details but the substance of it I find is consistent with SG's earlier statement to ICBC.
27. Ms. Gibney denies she sped through the intersection, and she says Mr. Hughes' car barreled into the intersection and hit her. Based on her description of the West Broadway light being red when she left the stop sign and that there was a flashing green at the time of collision, I find that on her own evidence Ms. Gibney entered the 4-lane intersection on a stale red, at best. However, considering all of the

evidence before me, and SG's in particular, I find it more likely that Ms. Gibney entered the intersection after the West Broadway light had already turned green.

28. Ms. Gibney argues that the severity of the damage to her car as compared to lesser-valued damaged to Mr. Hughes' car shows he caused the collision. I find Ms. Gibney's assertion alone does not show this, and I have no expert evidence before me about the vehicle damage and the cars' relative speeds or the accident's cause. Additionally, although vehicle damage is a factor to consider when determining liability in motor vehicle accidents, it is not determinative.
29. On balance, I find the weight of the evidence, including Mr. Hughes', Ms. Gibney's, and SG's evidence, shows Mr. Hughes' West Broadway light was green before he entered the intersection, and I have found above it was flashing rather than solid green. Similarly, I also find the weight of the evidence shows Ms. Gibney left the stop sign and entered the intersection at a high rate of speed, which I find is supported by both Mr. Hughes' and SG's evidence. I place significant weight on SG's evidence, as he is an independent unbiased witness with no prior relationship with either party. I find Ms. Gibney's conduct breached section 175 of the MVA, which requires a driver entering a through highway to yield the right of way to traffic that is already in the intersection, or that is so close to the intersection that it constitutes an immediate hazard. After having yielded, the driver may proceed with caution. Here, I find Ms. Gibney failed to yield to Mr. Hughes, who constituted an immediate hazard.
30. Ms. Gibney argues that her car was already in the intersection and there to be seen by Mr. Hughes before he hit her car. She says he failed to keep a proper look-out, because with a flashing green light she says he should have been more cautious. However, I accept SG's evidence to the effect that Ms. Gibney sped through the intersection without due care. I find on the evidence before me there is insufficient evidence that Mr. Hughes could have avoided the collision.



31. I turn then to Ms. Gibney's specific argument that Mr. Hughes should have been prepared to stop when faced with the flashing green and so should have been able to avoid the accident. I reject this argument, for the reasons that follow.
32. Section 131(5) of the MVA addresses flashing green lights, and says an approaching driver must approach so they are able to stop before reaching the signal or crosswalk if a stop should become necessary, and must yield the right of way to pedestrians lawfully in the crosswalk. I find the purpose of section 131(5) is to protect pedestrians who have activated the light in order to cross the roadway.
33. In any event, I find the applicable case law does not support Ms. Gibney's essential argument that Mr. Hughes had an absolute duty to slow down in the face of flashing green lights in order to avoid the accident with Ms. Gibney.
34. At paragraphs 34 to 36 of *Seddiq v. Chong*, 2012 BCSC 2080, after considering earlier applicable case law, the court concluded that while a flashing green is primarily for pedestrians' advantage, it can be considered in assessing the potential liability of a dominant driver who collides with a vehicle entering the intersection from a cross street.
35. However, in *Seddiq* the court also noted the MVA provisions do not provide a rigid code to be applied in assessing negligence. Rather, they are merely guidelines and so are not determinative of the liability issue (citing *Salaam v. Abramovic*, 2010 BCCA 212, at paragraph 21).
36. In *Seddiq*, the court found the defendant Ms. Chen failed to assess her situation so as to make a reasonable prediction about whether the traffic light would remain red long enough to enable her to safely carry out her turn. Rather, she halted at the stop sign only momentarily and entered the intersection to make her left turn without properly evaluating whether she had a safe window of opportunity to do so. While Ms. Gibney was going straight across West Broadway rather than making a left turn, I find a similar analysis applies. In particular, I find Ms. Gibney failed to ensure she had a safe opportunity to complete her crossing of West Broadway, given at

most the light was a stale red or more likely already green when she started to cross at a high rate of speed, as I have found above.

37. In *Lo v. Hughes*, 2020 BCSC 840, the court held at paragraph 272 that the plaintiff Ms. Lo was not required to approach the flashing green intersection more cautiously than she did:

I have found she was driving at or below the speed limit. With the light flashing green, had she seen the black Evo stopped at the stop sign or even inching forward, I do not accept she would not have been required to slow or anticipate Ms. Hearn would do what she did. Consequently, I do not accept that Ms. Lo breached the standard of care and I find [the left-turning driver] Ms. Hearn 100% liable ... .

38. Similarly, I find Mr. Hughes in the circumstances was not obliged to slow when faced with the flashing green light, even if he had seen Ms. Gibney at the Blenheim Street stop sign or inching forward (which on the evidence I find he did not). While Ms. Gibney alleges pedestrians narrowly escaped being hit by Mr. Hughes, she does not explain why she did not obtain statements from them as witnesses. So, I place little weight on Ms. Gibney's unsupported assertion about those pedestrians.
39. Given my conclusions above, I dismiss Ms. Gibney's claims. As noted, for reasons unknown to me, she abandoned her \$5,000 claim apart from reimbursement of CRT fees and her \$300 insurance deductible that I find she has not proven she paid. Nothing turns on this since I find Ms. Gibney is 100% responsible for the accident and dismiss her claims.
40. Under section 49 of the CRTA and CRT rule 9.5, a successful party is generally entitled to the recovery of their tribunal fees. I see no reason to deviate from that here. Ms. Gibney was unsuccessful and the respondents did not pay CRT fees. No dispute-related expenses were claimed.

**ORDER**

41. I order Ms. Gibney's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair