



# Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-002846

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Butcher v. Tahmoresinezhad*, 2020 BCCRT 1030

BETWEEN:

MIKE BUTCHER

**APPLICANT**

AND:

SHAHAB TAHMORESINEZHAD

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about liability for a May 28, 2019 motor vehicle collision. The applicant, Mike Butcher, was involved in a collision with the respondent, Shahab Tahmoresinezhad. The parties' insurer, the Insurance Corporation of British Columbia (ICBC), internally determined that Mr. Butcher was 100% responsible for the collision. Mr. Butcher disagrees with this decision, and suggests that Mr.

Tahmoresinezhad contributed to the collision by speeding and being distracted by his cellular phone. Mr. Butcher asks for an order that Mr. Tahmoresinezhad pay him \$1,000 for the cost of his deductible and the increase to his insurance premium. Mr. Tahmoresinezhad disagrees with Mr. Butcher's position.

2. Mr. Butcher is self-represented. Mr. Tahmoresinezhad is represented by an ICBC employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## ISSUES

7. The issues in this dispute are:
  - a. Who was responsible for the collision, and
  - b. If not Mr. Butcher, what is the appropriate remedy?

## EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. On May 28, 2019, the parties were driving their vehicles westbound on Keith Road in North Vancouver, British Columbia. Mr. Butcher was in the left lane and Mr. Tahmoresinezhad was in the right lane. Mr. Butcher says that, in anticipation of changing lanes, he checked his mirror and saw Mr. Tahmoresinezhad several car lengths behind him in the right lane. He thought it was safe to proceed, so he did. As he moved into the right lane, Mr. Butcher collided with Mr. Tahmoresinezhad. Mr. Tahmoresinezhad described the collision as a sideswipe. Photographs in evidence show that there was damage to the front passenger side of Mr. Butcher's vehicle, and to the rear driver's side of Mr. Tahmoresinezhad's vehicle.
10. The police attended the scene and issued tickets to Mr. Butcher for an unsafe lane change and to Mr. Tahmoresinezhad for leaving the scene without providing his information. Mr. Butcher's ticket apparently was reversed, and Mr. Tahmoresinezhad is challenging the ticket he received.
11. ICBC internally found that Mr. Butcher was responsible for the collision based on section 151 of the *Motor Vehicle Act* (MVA), which says that a driver must not drive a vehicle from one lane to another unless the driver has ascertained that the movement can be made safely and will in no way affect another vehicle's travel.

12. Mr. Butcher admits that he made a lane change, but says that Mr. Tahmoresinezhad contributed to the collision because he was speeding and distracted by his cellular phone. Mr. Butcher bases this conclusion on Mr. Tahmoresinezhad's manner after the collision, the fact that he has a "high performance" vehicle, and his observation that Mr. Tahmoresinezhad drove away from the scene at a "high speed".
13. Mr. Butcher provided information about his own cell phone use, and submits that Mr. Tahmoresinezhad should provide his cell phone records for the time of the collision, apparently to show whether or not he was using the phone at the time. As noted by Mr. Tahmoresinezhad, phone records would not establish that he was using a device as prohibited by section 214.2 of the MVA or was otherwise driving while distracted.
14. While I acknowledge that Mr. Butcher found Mr. Tahmoresinezhad's behaviour after the collision to be unusual, I do not find that this is determinative of his phone use or his speed. Further, Mr. Butcher did not provide evidence about Mr. Tahmoresinezhad's possible speed before the collision.
15. I find that Mr. Butcher has not proved that Mr. Tahmoresinezhad was speeding or distracted before the collision. However, even if these claims were established, Mr. Butcher still had the responsibility under section 151 of the MVA to ensure that his lane change was safe and did not affect the travel of other vehicles. On the basis of the evidence before me, I find that it was not safe to make a lane change and Mr. Butcher was responsible for the resulting collision.
16. As I have found that Mr. Butcher was responsible for the collision, he is not entitled to the damages he claims. I dismiss his claims.
17. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Butcher was not successful, I dismiss his claim for

reimbursement of tribunal fees. He did not make a claim for dispute-related expenses.

## **ORDER**

18. I dismiss Mr. Butcher's claims and this dispute.

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Lynn Scrivener, Tribunal Member