



# Civil Resolution Tribunal

Date Issued: October 2, 2020

File: SC-2020-004628

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kimberley v. ICBC*, 2020 BCCRT 1116

BETWEEN:

TRISTAN KIMBERLEY and Nadine Maurus

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
STAVROS HEIBEY

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on July 9, 2019 in Richmond, British Columbia.

2. The applicant, Tristan Kimberley, was driving a vehicle owned by the applicant, Nadine Maurus, when he rear-ended the respondent, Stavros Heibey. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures the individual parties.
3. The applicants say Mr. Heibey is solely responsible for the accident for making an “illegal lane change” and then stopping suddenly in the middle of the intersection. They seek \$986.44 for “damages resulting from vehicle collision”.
4. ICBC initially found Mr. Kimberley 100% responsible for the accident, which the applicants appealed through ICBC’s Claims Assessment Review (CAR) process. As a result of that appeal, an independent arbiter found Mr. Kimberley and Mr. Heibey each 50% responsible for the accident. The respondents rely on the CAR decision, and say liability should remain shared equally.
5. The applicants are represented by Mr. Kimberley. The respondents are represented by an ICBC adjuster.

## **JURISDICTION AND PROCEDURE**

6. 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 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 CRT 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 CRT’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 CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. In resolving this dispute the CRT 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 CRT considers appropriate.

## **ISSUES**

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

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicants bear 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?***

12. Mr. Kimberley argues that ICBC did not adequately handle its investigation of the July 9, 2019 accident.
13. To succeed against ICBC, the applicants must prove on a balance of probabilities that ICBC, as the applicants' insurer, breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assessing fault between Mr. Kimberley and Mr. Heibey (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
14. ICBC owes the applicants 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 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. Generally, Mr. Kimberley asserts that ICBC did not take into account many "key pieces of information" when it initially assigned him 100% fault for the accident, but then focused his submissions on where he disagreed with the later CAR decision. CAR decisions are made by an independent arbiter, not by ICBC. Otherwise, Mr. Kimberley says ICBC did not properly address the fact that Mr. Heibey left the scene of the accident without stopping, contrary to the *Criminal Code of Canada*, and section 68 of the *Motor Vehicle Act* (MVA). Specifically, Mr. Kimberley says ICBC should have found Mr. Heibey had a reverse onus to prove he did not flee the scene in an attempt to escape civil liability for the accident. In response, ICBC says

Mr. Heibey advised it that he felt Mr. Kimberley had road rage and struck his vehicle on purpose, so he did not stop immediately after the accident.

16. It is undisputed ICBC is an insurance provider, not a court or law enforcement agency. Despite Mr. Kimberley's arguments about Mr. Heibey's alleged intent for leaving the scene, I find there is no evidence to support Mr. Kimberley's assertions that Mr. Heibey intended to cause an accident and then ultimately escape liability. I note Mr. Heibey reported the accident to ICBC by at least July 10, 2019, the next day. I find it was reasonable for ICBC to accept Mr. Heibey's explanation of his reason for leaving the scene. Mr. Kimberley says the police became involved and ultimately ticketed Mr. Heibey, but that information is not before me, so I make no findings about it.
17. In the circumstances, I find the applicants have not proven ICBC acted unreasonably in investigating the accident or in its initial fault assessment. I find there is no evidence ICBC breached its statutory obligations or its contract of insurance. I dismiss the applicants' claim against ICBC.

***Who is responsible for the accident?***

18. The following facts are undisputed:
  - a. On July 9, 2019 at approximately 6:30 am, the applicants were driving in the left-most lane westbound on Bridgeport Road in Richmond, approaching the intersection for the on-ramp for Highway 99, intending to turn left onto the on-ramp.
  - b. At the same time, Mr. Heibey was also traveling westbound on Bridgeport, in the lane directly right of the applicants.
  - c. At some point, approximately 3 car lengths before the intersection, Mr. Heibey changed lanes into the applicants' lane, directly in front of the applicants. Mr. Heibey then commenced a left turn onto the on-ramp.

- d. Mr. Kimberley honked his horn at Mr. Heibey. In response, Mr. Heibey braked his vehicle, mid-intersection.
  - e. The collision occurred when Mr. Kimberley rear-ended Mr. Heibey's vehicle in the intersection, in the middle of both vehicles turning left.
- 19. The applicants say the accident occurred because Mr. Heibey unsafely cut them off from his sudden lane change, and then proceeded to brake suddenly when Mr. Kimberley had not yet had a chance to resume a safe following distance. Mr. Kimberley says the accident happened while Mr. Heibey was decelerating his vehicle.
- 20. In contrast, Mr. Heibey says the accident occurred when he was accelerating his vehicle through the left turn, after having braked briefly. Mr. Heibey relies on his statements as given to the CAR arbiter, which stated that after Mr. Heibey was established in the left lane after his lane change, and was mid-way through the intersection, he heard a honk and was startled, so started to brake his vehicle as he thought other vehicles were alerting him to a potential hazard ahead. When he realized there was nothing hazardous in front of him, Mr. Heibey said he began accelerating his vehicle again and was struck from behind by Mr. Kimberley.
- 21. Mr. Kimberley argues Mr. Heibey is solely responsible for the July 9, 2019 for two reasons. First, because he made an unsafe lane change ahead of Mr. Kimberley's vehicle, and two, for unsafely stopping in the middle of the intersection for no reason.
- 22. I turn then to the relevant provisions of the MVA:
  - a. Section 144(1) says a person must not drive without due care and attention and without reasonable consideration for other persons using the highway.
  - b. Section 151(a) says a driver must not move from one lane to another unless the movement can be safely made and will in no way affect another vehicle's

travel. Section 151(b) says a driver must not drive a vehicle from one lane to another if it requires crossing a solid line.

- c. Section 162 says that a driver must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the vehicles' speed and the amount and nature of traffic on, and condition of, the highway.

23. First, I will deal with Mr. Heibey's lane change. Mr. Kimberley says Mr. Heibey breached section 151 of the MVA for changing lanes over a solid white line, which Mr. Heibey does not really dispute. While I accept, on balance, that Mr. Heibey did cross a solid white line in changing lanes, I find that manoeuvre was not the primary cause of the accident. Instead, I find that the accident occurred after Mr. Heibey completed his lane change and had been established in the left lane for some time, as it is undisputed Mr. Heibey completed the lane change before the intersection and the accident occurred mid-way through the large intersection. Therefore, I find nothing turns on Mr. Heibey's likely breach of section 151, because that breach did not cause the accident and the applicants' claimed loss.

24. So, what about the parties' relative responsibility for the accident? For the reasons that follow, I find both Mr. Kimberley and Mr. Heibey equally responsible.

25. First, I find Mr. Kimberley bears some liability because, further to section 162 of the MVA, he was required to maintain a safe distance between his vehicle and Mr. Heibey's vehicle in front of him. Mr. Kimberley argues he was unable to do so because Mr. Heibey changed lanes in front of him, shortening the distance between the two vehicles. However, as noted above, I have found that Mr. Heibey had already completed his lane change and had been established in Mr. Kimberley's lane for some distance before the accident occurred. I find Mr. Kimberley reasonably ought to have slowed his vehicle during that time to expand the distance between the two vehicles, which he failed to do. Therefore, I find Mr. Kimberley partially responsible for the July 9, 2019 accident.

26. Although Mr. Kimberley argues at length about whether Mr. Heibey was decelerating or accelerating at the time of impact, I find nothing turns on this. Mr. Kimberley relies on his and Ms. Maurus's self-created 22-page "report" about the accident. Although the applicants state they are "EIT" (Engineers in Training), they provided no evidence about their qualifications to provide such opinions about whether Mr. Heibey was decelerating or accelerating at the time of the collision. I do not accept the "report" as expert evidence under the CRT's rules. In reality, the "report" is a package of the applicants' arguments for this dispute, and is not expert evidence. In any event, as noted above, I find nothing turns on whether Mr. Heibey was accelerating or decelerating at the time of the accident, as I find Mr. Kimberley was following too closely in any event.
27. That being said, I also find Mr. Heibey partially responsible for the accident. I find stopping unexpectedly while mid-turn in the middle of an intersection constitutes negligence on Mr. Heibey's part. Section 144 prohibits drivers from driving without reasonable consideration for other persons using the highway. Mr. Heibey says he was startled by Mr. Kimberley's honk and thought there might be a hazard ahead, but although that explains why Mr. Heibey stopped as he did, I find he stopped in an unsafe location and without consideration for other users of the roadway (see: *Turner v. Dos Santos*, 2012 BCSC 1382 at paragraph 36), as the undisputed evidence is that the lane in front of Mr. Heibey was clear. As noted above, I find nothing turns on whether the accident occurred while Mr. Heibey braked, or was accelerating after the brake, as I find stopping at all in those circumstances was negligent.
28. Given both Mr. Kimberley and Mr. Heibey breached their obligations under the MVA, I find they are each equally responsible for the July 9, 2019 accident.
29. I acknowledge the applicants say Mr. Heibey effectively destroyed evidence by failing to remain at the scene after the accident so they could photograph any damage to Mr. Heibey's vehicle. They say this directly relates to the amount of damage Mr. Heibey later claimed was caused by the accident, which they say is not



commensurate with the damage to Ms. Maurus's vehicle. I find there is no merit to this argument, though I note it is undisputed the applicants partially repaired Mr. Maurus's vehicle before allowing it to be inspected by ICBC, so it is unclear to me whether the damage to the two vehicles was consistent or not.

30. To the extent the applicants allege "insurance fraud" by Mr. Heibey related to the damage to his vehicle, this issue is not before me and I make no findings about it. The applicants also say Mr. Heibey lied about the collision occurring when he was accelerating, instead of decelerating, and therefore he is not credible and I should put no weight on his evidence. I disagree, as because I noted above, the applicants have not proven Mr. Heibey was actually decelerating at the time of the accident. Additionally, I find there is no merit to the applicants' allegations that Mr. Heibey intentionally caused the accident, or that he left the scene because he was driving under the influence. I find those allegations are speculative and unfounded, and I give them no weight.
31. So what about the applicants' damages? As noted above, the applicants claim \$986.44 for "damages resulting from vehicle collision". As I have found Mr. Kimberley 50% responsible for the accident, it follows any award for damages would be reduced by this same amount. However, the applicants do not explain what these damages are for, such as whether they are vehicle damage-related or for something else. I note the applicants provided numerous pieces of evidence, including a 22-page "report" they authored themselves, but neglected to provide any evidence or submissions about their claim for damages. Parties are told during the CRT process to provide all relevant evidence, including evidence related to claims for damages. Here, I find the applicants have failed to prove their entitlement to any damages resulting from the July 9, 2019 accident, and so I dismiss the applicants' claims.
32. Under section 49 of the CRTA, and the CRT 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 the applicants were not successful, I

find they are not entitled to reimbursement of their paid tribunal fees. The respondents did not pay any fees, and neither party claimed dispute-related expenses.

**ORDER**

33. I order the applicants' claims, and this dispute, dismissed.

---

Andrea Ritchie, Vice Chair