



# Civil Resolution Tribunal

Date Issued: October 29, 2020

File: SC-2020-002042

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peterson v. Texmo*, 2020 BCCRT 1224

BETWEEN:

BRIAN PETERSON

**APPLICANT**

AND:

SARAH TEXMO and INSURANCE CORPORATION OF BRITISH  
COLUMBIA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This small claims dispute is about measuring loss arising from an October 27, 2019 motor vehicle accident. The respondent, Sarah Texmo, drove her car into the parked truck of the applicant, Brian Peterson. The respondent, the Insurance Corporation of British Columbia (ICBC), insures both Ms. Texmo and Mr. Peterson.

2. Mr. Peterson seeks \$3,540 as compensation for accelerated depreciation. Accelerated depreciation means a loss in a vehicle's value beyond its natural depreciation. The respondents do not dispute that Ms. Texmo is 100% at fault for the accident. However, they deny Mr. Peterson suffered any loss from accelerated depreciation.
3. Mr. Peterson represents himself. An ICBC employee represents both respondents.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

### ***Claims for Lost Wages***

8. Mr. Peterson claimed \$800 for 2 days of lost wages arising from the October 2019 accident. The parties agree that they reached an agreement on this issue before adjudication. The claim for lost wages is therefore not before me in this decision.

### ***Claims Against ICBC***

9. ICBC argues that it should not be a party to this dispute. It submits that Mr. Peterson's claim should be against Ms. Texmo only.
10. Several CRT decisions have found that a tort claim for damages from accelerated depreciation are properly brought against the party who allegedly caused the damage. See, for example, *Liang v. ICBC*, 2020 BCCRT 192, *Lai v. Leung*, 2020 BCCRT 1111, and *Hartery v. ICBC*, 2020 BCCRT 1114.
11. While CRT decisions are not binding upon me, I agree with the reasoning in the above decisions. I find that ICBC is not a proper respondent in the tort claim for accelerated depreciation. I dismiss all claims by Mr. Peterson against ICBC.

### **ISSUE**

12. The issue in this dispute is whether Mr. Peterson is entitled to damages for accelerated depreciation, and if so, how much.

### **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant Mr. Peterson bears the burden of proof on a balance of probabilities. While I have read all of the parties' submissions and evidence, I only address them to the extent necessary to explain my decision.
14. I begin with the undisputed background. On October 27, 2019, Ms. Texmo collided with Mr. Peterson's parked 2010 Dodge Ram 2500 pickup truck. Photos of the

accident show that Ms. Texmo's car sustained severe damage to its frontal area. Mr. Peterson's truck sustained damage to its bumper and tailgate.

15. Ms. Texmo reported the collision to ICBC. ICBC internally concluded that Ms. Texmo was 100% at fault for the collision. It paid for repairs to Mr. Peterson's truck. The repairs cost \$10,807.16, as documented in a November 22, 2019 repair estimate.
16. Mr. Peterson requested compensation for accelerated depreciation from ICBC. As documented in a March 11, 2020 letter, ICBC denied this request.

### ***The Law***

17. As noted in *Signorello v. Khan*, 2010 BCSC 1448, in BC a person selling a used motor vehicle must declare to potential buyers whether that vehicle has sustained damage in an accident costing \$2,000 or more to repair. Mr. Peterson says that, as he must disclose the October 27, 2019 accident and repairs, his truck's market value is reduced beyond natural depreciation. Mr. Peterson says he is therefore entitled to compensation for accelerated depreciation.
18. The guiding principle in claims of accelerated depreciation is that the applicant is to be placed, as closely as possible, in the position he would have been in had the damage not occurred: *Miles v. Mendoza*, 1994 CanLII 419 (BCSC). It cannot be assumed that a properly repaired vehicle has suffered accelerated depreciation simply because it has been in an accident requiring extensive repairs: *Chiu v. Kumar et al*, 2006 BCPC 345.
19. The applicant does not need to demonstrate their loss by selling the vehicle. It is enough for the applicant to establish the accident reduced the vehicle's value: *Cummings v. 565204 B.C. Ltd.*, 2009 BCSC 1009 and *Signorello*.

## ***Valuation Evidence and Findings***

20. Under CRT rule 8.3(3), the CRT may accept expert opinion evidence from a person the CRT decides is qualified by education, training, or experience to give that opinion.
21. In the non-binding decision of *Lai* at paragraph 26, the CRT member wrote that courts have relied primarily on expert opinion in deciding claims of accelerated depreciation. Citing *Bergen v. Guliker*, 2015 BCCA 23, she concluded that a vehicle's valuation requires technical knowledge that is beyond common understanding and requires expert opinion.
22. I agree with the CRT member's comments as it relates to accelerated depreciation and I will use a similar analysis in my decision. In *Lai* the CRT member considered reports from Robert Fournier of Fournier Auto Group Ltd. and Mitchell WorkCenter, Total Loss (Mitchell). Mr. Fournier and Mitchell provided evidence in this dispute as well. I have weighed these reports independently and on their own merits in arriving at my conclusions, as discussed below.
23. Mr. Peterson submitted a "Preliminary Accelerated Depreciation Report" from Mr. Fournier. I am satisfied that the report is expert opinion evidence under the CRT's rules, based on his stated qualifications. He says in the report that he has provided assessments about vehicle valuations and accelerated depreciation since 2013. He has also been involved in selling and leasing motor vehicles at various times since 2000. Mr. Fournier previously testified as an expert witness in *Chiang v. Kumar and Sharma*, 2018 BCPC 127.
24. Mr. Fournier wrote that he based his report on the November 22, 2019 repair estimate, receipts for Mr. Peterson's aftermarket truck additions, and 2 colour pictures of the truck. He said that he calculated the average natural depreciation for the truck's make and model, then conducted research on comparable vehicles in the market. He concluded Mr. Peterson's truck had a pre-accident market value of \$30,140. He says that after the October 2019 accident and subsequent repairs, the truck had a value in the range of \$27,125 to \$27,730. He determined this by comparing the truck with

over 630 other accelerated depreciation reports by Fournier Auto Group Ltd. Mr. Fournier concluded that the truck's value dropped by \$2,410 to \$3,015 from accelerated depreciation due to the accident.

25. The respondents submitted a "Vehicle Valuation Report" by Mitchell. The Mitchell report's author is unidentified, and no credentials are stated. I therefore do not accept it as expert evidence under CRT rule 8.3(2). It says the truck's market value is \$21,558.83. The report based its conclusion on the value of 4 different comparable trucks, adjusted for the condition of Mr. Peterson's truck and pre-existing damage before the accident, aftermarket additions, and any refurbishment performed. There is nothing in the Mitchell report that indicates its author considered whether accelerated depreciation could affect truck value. I therefore find the Mitchell report does not address the issue in this dispute and so I place little weight upon it.
26. The respondents also provided 2 ads for what they say are comparable vehicles. The first has a list price of \$27,388, with one declared accident resulting in over \$2,000 of repairs. Its stated mileage is 105,894 kilometers. The second has no accident history and a list price of \$18,900, but greater mileage of 363,000 kilometers.
27. The respondents say that the truck's mileage, import status, condition, and age are greater determinants of its resale value. The respondents say that the 2 ads demonstrate that mileage matters much more than accident history. I note a photo shows Mr. Peterson's truck has a mileage of 310,157 kilometers.
28. It is also undisputed that Mr. Peterson's truck is a USA import vehicle. The respondents say it was likely not subject to any accident reporting requirements while it was in the USA. The respondents say that any buyers would reduce their offers to take potential undeclared accidents into account.
29. While I acknowledge the respondents' submissions, they are unsupported by any expert evidence. I do not find it clear or obvious from the 2 ads alone that Mr. Peterson's truck would be unaffected by accelerated depreciation. The ads provide a very limited set of data from which to draw any conclusions.

30. Mr. Fournier's report directly addressed the issue of accelerated depreciation. He outlined his years of experience in this field, which I accept as accurate. He also outlined what evidence he used, and the assumptions he made in writing his report. These included assuming Mr. Peterson's truck was in average condition and the repairs brought the truck back to factory specification. Mr. Fournier also used the correct truck mileage figure of 310,157 kilometers in his report.
31. Mr. Fournier did not directly address the fact that Mr. Peterson imported his truck. He instead noted he assumed the truck had no previous damage that cumulatively exceeded \$2,000 to repair. On balance, I find his overall approach reasonable. There is no expert evidence contradicting Mr. Fournier's opinion and so I place significant weight on it.
32. Given the above, I accept Mr. Fournier's opinion. I find it more likely than not that Ms. Texmo's negligence caused Mr. Peterson's truck to depreciate beyond its natural rate by \$2,410 to \$3,015. There is no evidence the higher end of the range is warranted, so I find that Ms. Texmo must pay Mr. Peterson \$2,410 in damages.

## **INTEREST, FEES AND EXPENSES**

33. Mr. Peterson did not claim any prejudgment interest and I do not find any is payable. Accelerated depreciation is a loss that Mr. Peterson has not yet incurred, so I find that under section 2(a) of the *Court Order Interest Act* he is not entitled to prejudgment interest on the \$2,410 award.
34. 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. Mr. Peterson was partially successful and only against Ms. Texmo. I find he is entitled to reimbursement of \$87.50 from Ms. Texmo, which is for half his paid CRT fees.
35. Mr. Peterson also claims \$525 as reimbursement for the cost of Mr. Fournier's report. This amount is supported by a December 2, 2019 invoice. I find this reasonable as it

was the key piece of evidence in this dispute. I also find that the cost was proportional to the amount at issue. I order Ms. Texmo to reimburse Mr. Peterson for the cost of the report.

36. The respondents did not pay any CRT fees or claim any dispute-related expenses, so I make no order for them.

## **ORDERS**

37. Within 14 days of the date of this order, I order Ms. Texmo to pay Mr. Peterson a total of \$3,022.50, broken down as follows:

- a. \$2,410.00 in damages, and
- b. \$612.50, for \$87.50 in CRT fees and \$525.00 for dispute-related expenses.

38. Mr. Peterson is entitled to post-judgment interest, as applicable.

39. I dismiss Mr. Peterson's remaining claims, including all his claims against ICBC.

40. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.



41. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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David Jiang, Tribunal Member