



# Civil Resolution Tribunal

Date Issued: January 27, 2021

File: SC-2020-005249

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Faget v. ICBC*, 2021 BCCRT 97

BETWEEN:

GHERSOM FAGET and CONSTANTIN FAGET

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
TERENCE SMITH

**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 happened on February 11, 2020 in Chilliwack, British Columbia.

2. The applicant, Ghersom Faget, says his truck's rear was struck by a vehicle driven by the respondent, Terence Smith, while Mr. Faget was attempting a left turn. It is unclear how the applicant, Constantin Faget, is involved in this dispute.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Mr. Faget and Mr. Smith, and internally concluded Mr. Faget was 100% responsible for the accident for failing to yield the right of way when turning left.
4. Mr. Faget says Mr. Smith should be found solely responsible for the accident, and says he wants "ICBC to be fair" and "reassess the accident". Mr. Faget seeks \$5,000 in compensation, which he says is for increased insurance premiums and accident damage.
5. Mr. Faget represents both applicants. The respondents are represented by an ICBC employee.

## **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). Section 2 of the CRTA states that 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.
7. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. Section 42 of the CRTA says that 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.

***The applicant Constantin Faget***

10. As noted above, although Constantin Faget is a named applicant in this dispute, there is no explanation about their role or involvement in the accident, this dispute, or about their relationship with Ghersom Faget. There is no indication in the parties' evidence or submissions about who the owner of the truck is, whether it is Ghersom Faget or Constantin Faget. However, I find nothing turns on this, given my conclusions below. Further, there is no claim specifically made by Constantin Faget, and no remedy requested on Constantin Faget's behalf. Therefore, I dismiss Constantin Faget's claims.

### ***Claims against ICBC***

11. Although Mr. Faget named ICBC as a respondent in this dispute, he did not make any allegations against it, apart from a general assertion that he wanted ICBC “to be fair” and to reassess liability for the accident “in an unbiased manner”. Mr. Faget did not explain how ICBC allegedly acted in a biased manner, and did not claim any remedies from ICBC specifically. I dismiss Mr. Faget’s claims against ICBC.
12. To the extent Mr. Faget is seeking an order that ICBC reinvestigate the accident and reassess fault, ordering someone to do something, or to stop doing something, is known as “injunctive relief”. Injunctive relief is outside the CRT’s small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant provisions here that would have permitted me to grant the injunctive relief sought by Mr. Faget in any event.

### **ISSUE**

13. The issue in this dispute is who is responsible for the February 11, 2020 accident, and to what extent, if any, Mr. Faget is entitled to his claimed \$5,000 in damages.

### **EVIDENCE AND ANALYSIS**

14. In a civil claim such as this, the applicant Mr. Faget 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.

#### ***The accident***

15. It is undisputed that on February 11, 2020, Mr. Faget was traveling westbound on Yale Road in Chilliwack, British Columbia, intending to turn left onto Lickman Road. At the same time, Mr. Smith was traveling eastbound on Yale Road, straight through the Lickman Road intersection.

16. Yale Road in that area is “U-shaped”. That is, there is a 90-degree left curve for westbound Yale Road traffic before approaching the Lickman Road intersection. Similarly, there is a 90-degree right curve for eastbound Yale Road traffic before approaching the intersection. Yale Road traffic in both directions at Lickman Road is controlled by a traffic light. Each direction on Yale Road has a straight through lane and a left turn lane.
17. Mr. Faget says he was waiting in the left turn lane at a red light. Mr. Faget’s evidence varies about whether there were one or two vehicles ahead of him at the light. In any event, when the light turned green, Mr. Faget says he advanced into the intersection to wait to turn. He stated once the intersection was clear, he started his left turn from the middle of the intersection and when he was 80 to 90% finished, his truck was “struck from behind”.
18. Mr. Smith says he was driving eastbound on Yale Road, intending to pass straight through the intersection. Mr. Smith says as he approached the intersection he saw Mr. Faget turn left in front of him and then stop for traffic while in the intersection. Mr. Smith says he tried to swerve to avoid Mr. Faget, but because there was a vehicle beside him, he was unable to avoid the collision and the front end of his vehicle struck the right side of Mr. Faget’s truck, just behind the rear wheel.
19. Photographs of the vehicles in evidence show that the front end of Mr. Smith’s vehicle and the right side rear of Mr. Faget’s truck came into contact, consistent with Mr. Smith’s version of events.
20. A witness, AC, provided a statement to ICBC. AC said he initially contacted Mr. Faget because Mr. Faget had his truck listed for sale on Craigslist, which was listed both before and after the accident. In his statement, AC stated he was a pedestrian at the corner of Yale Road and Lickman Road on the day of the accident. AC stated he saw Mr. Smith’s vehicle “coming at speed” to the intersection, that there was a lot of traffic around, and that the accident happened to AC’s right. AC said he “had to stand up on the meridian to see what happened”, and saw the two vehicles pull over to the side, so he kept walking. AC gave the opinion that Mr. Smith was speeding, but noted

while he's "not a cop with a radar", he "could tell". AC thought the light was amber when the accident occurred. AC further stated that before the accident, Mr. Faget had his truck listed for sale on Craigslist for \$2,500 and that he had contacted Mr. Faget about it but had not received a response. After the accident, Mr. Faget lowered the price to \$700, and AC again contacted Mr. Faget, but this time about being a witness as AC said he was no longer interested in the damaged truck.

21. I find there are several issues with AC's evidence. First, AC says he witnessed the accident while walking eastbound on Yale Road. However, he also stated he needed to stand on the meridian to "see what happened". I infer from this that in order to see the accident location, AC had to stand on the meridian. However, there is no indication AC was walking on the meridian when the accident happened. Therefore, it is unclear to me whether AC did, in fact, witness the actual collision. Further, although AC made several comments about Mr. Smith's speed, there is no evidence before me that AC has any qualifications that would enable him to provide an assessment of a vehicle's speed. Additionally, despite the fact AC believed the light was amber when the accident occurred, both Mr. Faget and Mr. Smith agree the light was green at the time. For these reasons, I place little weight on AC's statement.
22. So, who is responsible for the February 11, 2020 accident? Section 174 of the *Motor Vehicle Act* (MVA) says that a driver intending to turn left at an intersection must yield the right of way to traffic approaching from the opposite direction that is in the intersection, or is so close as to constitute an immediate hazard.
23. The decision in *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA), sets out the obligations of a left turning driver. In *Pacheco*, Justice Legg stated that a servient driver (the left turning driver, here, Mr. Faget) has an obligation not to proceed unless it can be done safely, and that the mere presence of a left turning driver does not place an extra duty on the dominant driver (the through driver, here, Mr. Smith) to take extra care. Justice Legg further says that when a servient driver disregards their statutory duty to yield the right of way, then to place any blame on the dominant driver, the servient driver must establish that the dominant driver

was aware or reasonably should have been aware of the servient driver's disregard of the law. Any doubt must be resolved in favour of the dominant driver (see: *Walker v. Brownlee* (1952), 1952 CanLII 328 (SCC) at 461).

24. In determining whether a vehicle constitutes an "immediate hazard" under section 174 of the MVA, the decision in *Raie v. Thorpe* (1963), 1963 CanLII 885 (BCCA) says that the point of time for assessing the question of immediate hazard arises the moment before the driver proposing to turn left starts their turn. The courts have regularly stated that the onus is on a left turning driver to prove that they started to turn left when it was safe to do so, and that the through driver was not an immediate hazard (see: *Nerval v. Khera*, 2012 BCCA 436 at paragraph 33).
25. Here, as Mr. Faget acknowledged in a telephone conversation with ICBC on February 14, 2020, there is a curve in Yale Road about 20 feet from the intersection with Lickman Road. I find that although Mr. Faget submits he started his turn when the intersection was clear, it was incumbent on him to ensure that no vehicles were rounding that curve on Yale Road just a short distance away. I find that given the relatively sharp curve so close to the intersection, Mr. Smith's eastbound vehicle constituted an immediate hazard when Mr. Faget commenced his left turn.
26. I find that given the intersection's layout and the heavy traffic at the time, Mr. Faget did not determine whether his left turn could be made safely before he started it, in breach of section 174 of the MVA. I find Mr. Faget failed to yield to Mr. Smith, whose vehicle was an immediate hazard.
27. Given Mr. Faget's breach of his statutory duty under the MVA, to place any blame on Mr. Smith, Mr. Faget must prove that:
  - a. Mr. Smith became aware, or should have been aware, of Mr. Faget's disregard of the law by turning left when it was unsafe to do so, and
  - b. Mr. Smith had sufficient opportunity to avoid the accident.

28. Here, there is no allegation Mr. Smith could have avoided the collision. Although Mr. Faget argues Mr. Smith was speeding, Mr. Smith denies this, and I find there is insufficient evidence in support of Mr. Faget's allegation. Further, it is Mr. Smith's undisputed evidence that due to heavy traffic in the intersection, he was unable to avoid the collision with Mr. Faget, which I accept. Additionally, there is no evidence Mr. Smith was aware, or should have been aware, that Mr. Faget failed to yield the right of way by turning in front of him. As noted above, the curve in Yale Road would have limited visibility for both parties. However, as the dominant driver, Mr. Smith was entitled to proceed through the intersection on the assumption that other drivers would obey the rules of the road. I find there was no negligence on Mr. Smith's part which contributed to the February 11, 2020 accident.
29. As a result, I find Mr. Faget solely responsible for the accident, and therefore is not entitled to his claimed damages. I dismiss Mr. Faget's claims.
30. I note that despite claiming \$5,000 in damages, Mr. Faget did not provide any evidence of the value of his truck or necessary repairs, or of his alleged increase in insurance premiums.
31. 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 Mr. Faget was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. The respondents did not pay any tribunal fees. Neither party claimed dispute-related expenses.



## **ORDER**

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

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Andrea Ritchie, Vice Chair