



# Civil Resolution Tribunal

Date Issued: June 1, 2021

File: SC-2020-009603

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Morrison*, 2021 BCCRT 597

BETWEEN:

GRAHAM SMITH

**APPLICANT**

AND:

JACQUELINE MORRISON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident that occurred on August 31, 2020 in Maple Ridge, British Columbia.
2. The applicant, Graham Smith, says he was attempting a left turn when his vehicle was t-boned by a vehicle driven by the respondent, Jacqueline Morrison. Mr. Smith

says that Ms. Morrison entered the intersection on a red light, so she should be held solely responsible for the accident. Mr. Smith claims \$500 for reimbursement of his deductible. Mr. Smith also says he wants to avoid increased insurance costs resulting from a finding by his insurer, Insurance Corporation of British Columbia (ICBC), that he was at fault. Mr. Smith asks for an order that ICBC find Ms. Morrison at fault, which he values at \$1.00.

3. Ms. Morrison says she entered the intersection as the light turned yellow and Mr. Smith turned left in front of her. She says there were several witnesses to the accident with inconsistent evidence about the light's colour and how the accident happened. Ms. Morrison says that Mr. Smith has not proven that she ran a red light, so this dispute should be dismissed.
4. Mr. Smith is self-represented. Ms. Morrison is represented by an ICBC adjuster.

## **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). 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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 in the interests of justice.

7. Section 42 of the CRTA says 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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. As noted, one of Mr. Smith's requested remedies is for an order that ICBC find Ms. Morrison 100% at fault, so that Mr. Smith can avoid increases to his insurance costs. While ICBC was initially named as a respondent to this dispute, Mr. Smith removed ICBC as a party during the facilitation stage. I find I do not have jurisdiction to make an order against a non-party. However, even if I could make an order against ICBC, I find the requests for orders declaring that Ms. Morrison is at fault or that ICBC not increase Mr. Smith's insurance costs, are requests for declaratory or injunctive relief, which fall outside the CRT's jurisdiction under section 118 of the CRTA. Therefore, I decline to consider these requested remedies.

## **ISSUES**

10. The issues in this dispute are:
  - a. Who is responsible for the accident?
  - b. What damages, if any, is Mr. Smith entitled to?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant, Mr. Smith must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.

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

12. It is undisputed that on August 31, 2020, at approximately 5:00 p.m., Mr. Smith was travelling westbound on Dewdney Trunk Road, in the dedicated left turn lane at the intersection with Laity Street. Dewdney Truck Road has 2 through lanes plus a dedicated left turn lane for both eastbound and westbound traffic at the intersection with Laity Street. Laity Street has one through lane, plus a dedicated left turn lane for both northbound and southbound traffic at this intersection.
13. Mr. Smith entered the intersection on a green light and was waiting to turn left so he could proceed southbound on Laity Street. He says his light turned yellow, and 2 eastbound cars in the middle lane proceeded through the intersection. Mr. Smith says once his light turned red, he started his left turn. He says that traffic in the eastbound curb lane had come to a stop. Mr. Smith says Ms. Morrison was in the middle eastbound lane, and she ran the red light. The front of Ms. Morrison's vehicle collided with the passenger side of Mr. Smith's vehicle.
14. Ms. Morrison disputes that the light was red when she entered the intersection. She says as she approached Laity Street, she was travelling at approximately 45 to 50 kilometres per hour, and her light was green. Ms. Morrison says that just as the front wheels of her vehicle crossed the first crosswalk line on the road, the light turned yellow and it was unsafe to stop. She says Mr. Smith started his left turn at the same time as she entered the intersection, and she was unable to stop or avoid the collision.
15. There were 5 independent witnesses to the accident. On behalf of Ms. Morrison, ICBC provided its file notes of telephone conversations with the witnesses and the parties about the accident circumstances. I find the key issue in this dispute is the light's colour when Ms. Morrison entered the intersection. So, I will focus my discussion of the witness statements on that issue.
16. The first 2 witnesses, BV and MB, were in a vehicle travelling eastbound directly behind Ms. Morrison. BV was in the front passenger seat and MB was driving. BV stated that the light was green as they approached the intersection, and it turned

yellow as Ms. Morrison was about to pass over the stop line to enter the intersection. BV said the light was still yellow when Ms. Morrison collided with Mr. Smith. BV stated she was 100% certain that Ms. Morrison went through the intersection on a yellow light.

17. Similarly, MB stated that the light was yellow when Ms. Morrison entered the intersection, and it turned red “pretty much as they hit each other”. MB stated he was also certain that Ms. Morrison entered the intersection when the light was yellow.
18. The next 2 witnesses, BS and NS, were in a stopped vehicle facing northbound on Laity Street. An independent adjuster also obtained signed statements from BS and NS, copies of which are in evidence. Both BS and NS stated they were looking down at the road in front of them at the time of the collision. BS stated she only looked up when she heard the impact and at the same time saw her light had turned green. NS stated that she saw out of her peripheral vision that Mr. Smith was in the intersection and all other traffic on Dewdney Trunk Road had stopped before Ms. Morrison entered the intersection and collided with Mr. Smith. NS stated she only noticed that her light had turned green when the car behind her honked for her to go.
19. The final witness, PA, was stopped behind Mr. Smith in the eastbound left turn lane. PA told ICBC that Mr. Smith waited for all eastbound cars to pass when the light turned yellow. PA said the light turned red and all other vehicles had stopped before Mr. Smith proceeded with his left turn. PA stated he was sure Ms. Morrison ran the red light.
20. The parties also provided a light sequencing report from the City of Maple Ridge. This report showed that the yellow light for traffic on Dewdney Trunk Road was 3.4 seconds long. The yellow light was followed by 1.7 seconds where the lights in all directions were red, before the light for traffic on Laity Street turned green.
21. On balance, I find that Ms. Morrison likely entered the intersection when the light was still yellow. I say this because I find the weight of the evidence indicates the impact occurred just as the light turned red. This conclusion is consistent with MB’s evidence

about the light colour when the cars collided, as well as BS' and NS' evidence about the timing of their light turning green on Laity Street, and NS' and PA's evidence that other traffic on Dewdney Trunk Road had come to a stop just before Ms. Morrison entered the intersection.

22. While PA said Ms. Morrison entered the intersection on a red, I find PA's view of Ms. Morrison's vehicle may have been obstructed because he was behind Mr. Smith's vehicle. I also note that PA did not state whether he saw Ms. Morrison's vehicle before she entered the intersection. So, I find PA's evidence about the light colour when Ms. Morrison entered the intersection is less reliable.

23. I turn to the relevant provisions of the *Motor Vehicle Act* (MVA):

a. Section 128 says that when a traffic light turns yellow, a vehicle approaching the yellow light must stop before entering the intersection unless the stop cannot be made in safety.

b. Section 174 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.

24. 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 said that a driver who wishes to make a left hand turn in an intersection has an obligation to yield to oncoming traffic which is in the intersection, and that a dominant driver (driving straight through) is entitled to proceed on the assumption that all other vehicles will observe the rules of the road. Justice Legg goes on to say that when a left turning driver disregards their obligation to yield the right of way, to place any blame on the dominant driver, the left turning driver must establish that the straight through driver was aware or reasonably should have been aware of the left turning driver's disregard of the law. Any doubt must be resolved in favour of the straight through driver (see: *Walker v. Brownlee* (1952), 1952 CanLII 328 (SCC) at 461).

25. In *Krist v. Bock*, 2018 BCSC 433, Justice Bowden stated that the presence of a vehicle in the left turn lane does not cast a duty on the straight through driver to take extra care, and that the straight through driver is entitled to presume the left turner will not start a turn until the straight through driver has cleared the intersection.
26. Further, in determining whether a vehicle constitutes an “immediate hazard” under section 174 of the MVA, *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, and not at an earlier point.
27. Given I have found Ms. Morrison entered the intersection on a yellow light, I must now determine whether she could have safely come to a stop before entering the intersection. Ms. Morrison, MB, and BV all said that the light turned yellow just as Ms. Morrison’s front tires crossed into the intersection. However, I do not accept that evidence. The intersection was only 3 lanes wide. Given the undisputed evidence that Ms. Morrison was traveling approximately 50 kilometres per hour, and the yellow light was 3.4 seconds long, I find Ms. Morrison likely would have been able to clear the intersection before the light turned red if she entered as the light turned yellow.
28. As noted, I find the vehicles collided just as the light turned red. Mr. Smith was attempting to turn left into the single southbound lane of Laity Street, towards the west-most side of the intersection, where Ms. Morrison was entering the intersection. Therefore, I find Ms. Morrison likely entered the intersection at a later stage of the yellow light, also known as a stale yellow.
29. Further, given the evidence of Mr. Smith, PA, NS, and BS that traffic in the curb lane beside Ms. Morrison had come to a stop before she entered the intersection, I find Ms. Morrison likely could have safely come to a stop for the yellow light. Therefore, I find she bears some responsibility for the accident.
30. I turn now to Mr. Smith’s actions. Notably, Mr. Smith provided a signed statement made to an independent adjuster, in which he said he saw Ms. Morrison approaching the intersection before he started his turn. He stated she was at least 3 car lengths

from the intersection stop line but, because his light had turned red, he assumed she would not enter the intersection. He also stated he was unable to gauge her speed or if she was braking.

31. I find the circumstances here are similar to the case of *Hurdle v. Lagore*, 2014 BCSC 2316. The accident in *Hurdle* also involved a left turning driver who claimed the light had turned red before she started her turn, and the driver going straight through the intersection (on a motorcycle) claimed he entered the intersection as the light turned yellow. As in this case, there were several independent witnesses in *Hurdle* with irreconcilable evidence about the colour of the light. Mr. Justice Crawford found that the motorcycle driver entered the intersection on a “later yellow”, and that he chose to proceed when he likely could have stopped. Nevertheless, Mr. Justice Crawford found the left turning driver bore the majority of fault because she did not see the oncoming motorcycle when it was there to be seen. On that basis, he held the left turning driver 80% at fault.

32. A distinguishing factor here, is that Mr. Smith saw Ms. Morrison approaching the intersection before he started his turn. Yet, he made no attempt to determine her speed or whether she was going to stop. Even though Ms. Morrison entered the intersection on a stale yellow, I find she was there to be seen and was so close that she constituted an immediate hazard. I find that Ms. Morrison was the dominant driver, and Mr. Smith was obligated to yield to her.

33. Under the circumstances, I find that Mr. Smith bears 85% of the responsibility for the accident and Ms. Morrison is 15% responsible.

### ***Damages***

34. The evidence shows that Mr. Smith paid a \$500 deductible, which was applied to his vehicle’s total loss payout. Given I have found Ms. Morrison was 15% at fault, I find Mr. Smith is entitled to reimbursement of 15% of his deductible, which is \$75.



35. The *Court Order Interest Act* applies to the CRT. Mr. Smith is entitled to pre-judgment interest on the \$75 from December 22, 2020, the date the Dispute Notice was issued, to the date of this decision. This equals \$0.15.
36. 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. Here, I find Mr. Smith was partially successful, so is entitled to reimbursement of half his CRT fees, which is \$62.50. Neither party claimed any dispute-related expenses.

## **ORDERS**

37. Within 30 days of the date of this order, I order Ms. Morrison to pay Mr. Smith a total of \$137.65, broken down as follows:
  - a. \$75 as reimbursement for his deductible,
  - b. \$0.15 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
38. Mr. Smith is entitled to post-judgment interest, as applicable.
39. 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.

40. 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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Kristin Gardner, Tribunal Member