



# Civil Resolution Tribunal

Date Issued: August 3, 2021

File: SC-2021-001433

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DesRoches v. ICBC*, 2021 BCCRT 846

BETWEEN:

GARY DESROCHES

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and CLARE  
CONTINI

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on December 19, 2019, in Vancouver, B.C.
2. The applicant, Gary DesRoches, was parking his red Toyota Yaris behind the respondent Clare Contini's grey Kia Sedona, when the 2 cars collided. The

respondent insurer Insurance Corporation of British Columbia (ICBC) insures both parties. ICBC internally determined that Mr. DesRoches was 100% at fault for the accident. I am not bound by ICBC's determination.

3. Mr. DesRoches denies responsibility for the accident. He says Ms. Contini reversed her car into his. He also says there was no damage to either vehicle. Mr. DesRoches claims \$1,600 for increased insurance premium costs.
4. Ms. Contini says she is not responsible for the accident and says that Mr. DesRoches rear-ended her. ICBC says it is not a proper party to this dispute. I infer both respondents ask that the dispute be dismissed.
5. Mr. DesRoches represents himself. Ms. Contini and ICBC 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 the dispute's parties that will likely continue after the CRT process has ended.
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.
8. 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. In some respects, this dispute amounts to a "he said, she said" scenario. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of personal demeanour in a courtroom or tribunal proceeding. In

*Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. Further, bearing in mind the tribunal's mandate, which includes proportionality and a speedy resolution of disputes, I find that I am properly able to assess and weigh the evidence before me without an oral hearing.

9. 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.
10. In its Dispute Response, ICBC says it is not a proper party to this dispute. I disagree. As discussed below, Mr. DesRoches argues that ICBC incorrectly determined that he was at fault for the accident, or that Ms. Contini's vehicle was damaged in the accident, which I find is a claim against ICBC as his insurer (see *Innes v. Bui*, 2010 BCCA 322). I find ICBC is a properly named party.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is Ms. Contini fully or partially responsible for the accident?
  - b. Was Ms. Contini's car damaged?
  - c. Did ICBC breach its statutory obligation or contractual duty to investigate the car accident and assess fault?
  - d. If any answer is "yes", what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this one the applicant, Mr. DesRoches, must prove his claim on a balance of probabilities. I have reviewed the Dispute Notice and Dispute Responses of all parties, and the evidence submitted. Neither party provided submissions during the submission process, despite being given the opportunity to

do so. However, Mr. DesRoches provided a written document as evidence which contained his submissions. Due to the document's format, I could not open it and asked the CRT staff to have Mr. DesRoches resubmit the document in a different format. Although ICBC was provided with the document and an opportunity to provide submissions, it declined to do so.

### ***Who is Responsible for the Accident?***

13. It is undisputed that Ms. Contini's car was parked parallel to the curb when Mr. DesRoches started to park his car behind Ms. Contini's car. It is also undisputed that the front of Mr. DesRoches' car collided with, touched, or bumped the rear of Ms. Contini's car.
14. Mr. DesRoches says that while he drove forward, Ms. Contini reversed her car, which Ms. Contini denies. Mr. DesRoches says the 2 cars struck each other.
15. According to ICBC's claim notes, Ms. Contini reported the accident on December 20, 2019. She said she was sitting in her parked car with the engine off when Mr. DesRoches' front bumper hit her rear bumper which she said caused a "big jolt". In a January 16, 2020 email to ICBC, Ms. Contini confirmed that she was not getting ready to leave her parking spot, but rather was getting ready to go into a store, when the accident happened.
16. Mr. DesRoches reported the accident to ICBC on December 31, 2019. He said that he was pulling forward in the parking spot behind Ms. Contini when Ms. Contini started reversing her car. Mr. DesRoches said the bumpers of both cars contacted each other. On January 20, 2020, Ms. DesRoches told ICBC that, as he pulled into the parking spot, Ms. Contini's car lights were on and he thought she might be leaving the parking spot. He said that both cars were moving when they simultaneously touched, or bumped, each other.
17. In rear-end collisions, such as this one, the onus is often said to fall upon the rear driver to show that the collision is not their fault. This reflects the fact that a rear-end collision itself indicates that the rear driver failed to keep a safe distance or drive with

due care and attention. However, drivers are not required to anticipate every possibility or see the unforeseeable (see *Amey v. Millen*, 2021 BCSC 1281 at paragraph 60, citing *Chauhan v. Welock*, 2020 BCSC 1125, aff'd 2021 BCCA 216).

18. It is undisputed that there were no witnesses to, or video of, the accident. Neither is there any indication that any damage to either car would provide insight into whether Ms. Contini was reversing her car at the time of the accident. I find Mr. DesRoches' statements to ICBC no more, or less, credible than those of Ms. Contini, given that both parties reported the accident to ICBC within a few weeks of each other and both reports are plausible explanations of how the accident could have happened. However, I find Mr. DesRoches must show the accident was not his fault because he was the rear driver and bears the burden of proof as the applicant in this dispute. Given the evidentiary tie here, I find Mr. DesRoches has failed to prove that Ms. Contini was at fault for the accident.

### ***Vehicle Damage***

19. Mr. DesRoches says Ms. Contini's car was not, and could not have been, damaged in the accident. I infer Mr. DesRoches argues that his insurance premiums should not have increased because Ms. Contini's car was not damaged in the accident.
20. In his December 31, 2019 accident report Mr. DesRoches reported there was no vehicle damage. On January 20, 2020, Mr. DesRoches told the ICBC adjuster that he thought his front bumper, and possibly his licence plate, hit Ms. Contini's rear bumper. He also said that both he and Ms. Contini checked their vehicles and there was no damage. I infer he means they checked their vehicles immediately following the accident. Mr. DesRoches also told the adjuster that Ms. Contini's rear bumper had a "few things" but thought Ms. Contini had told him that it was old damage.
21. In contrast, Ms. Contini reported seeing grey paint from her car on Mr. DesRoches' front bumper at the accident scene, which Mr. DesRoches attempted to rub off but could not. In her January 16, 2020 email to ICBC, Ms. Contini recounted Mr. DesRoches saying something like "it's nothing dear" to her at the accident scene. Mr.

DesRoches does not dispute having this conversation, so I accept Ms. Contini's statement as true. In her email Ms. Contini denied any prior damage to her rear bumper. Given this, I find it more likely than not that Ms. Contini's car was damaged in the accident. This is also supported by photos of both vehicles submitted by ICBC, ICBC's repair estimates, and the notes of an ICBC estimator, as explained below.

22. An ICBC estimator, SW, inspected Mr. DesRoches' car on February 28, 2020. According to SW's notes, he saw a horizontal dent on the front bumper cover, to the left of the centrally located licence plate. He also saw as a dent to the licence plate's left front edge, and scuffs on the licence plate. SW said the damage was approximately 18.25 inches off the ground. These observations are consistent with ICBC's photos of Mr. DesRoches' vehicle, including height measurements of the front licence plate and bumper damage. The photos also show scratches and grey marks on the center of Mr. DesRoches' front bumper, above the licence plate. I disagree with Mr. DesRoches that the marks on his front bumper are reflections from ceiling lights. While the photos include reflections, those are shiny and white. However, the photos also show dull, grey marks on Mr. DesRoches' bumper, which I find are more likely scratches, scuffs, or possibly paint transfer.
23. SW noted that ICBC's photos of Ms. Contini's car showed a horizontal scratch on her rear bumper cover approximately 17.75 inches off the ground. The photos show a scratch on the right central area of the rear bumper cover, and cracks on the inside of the bumper cover. In his notes, SW said that the damage between the 2 vehicles was a "close match". SW's notes do not constitute expert evidence under the CRT rules because ICBC did not provide SW's qualifications to provide opinion evidence about whether the damage to the vehicles match. However, I find SW's conclusion of matching damage is consistent with the vehicle damage shown in the photos in evidence. Given this, I accept SW's conclusion that the damage on the 2 cars matched.
24. Mr. DesRoches says that his round front bumper could not have damaged Ms. Contini's flat rear bumper. However, he did not provide any contradictory expert

opinion evidence about the cause of the vehicle damage. Neither did he provide any evidence that the damage to either vehicle pre-existed the accident. As noted, Mr. DesRoches must prove his claim and, given the evidence above, I find he has failed to show that Ms. Contini's car was not damaged in the accident.

***Did ICBC breach its statutory or contractual obligations?***

25. ICBC owes Mr. DesRoches a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and in making its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71). As noted in the Continuing Legal Education Society 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 assessment of the collected information" (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).
26. To succeed in his claim against ICBC, Mr. DesRoches must prove it more likely than not that ICBC 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. DesRoches and Ms. Contini (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes*).
27. The evidence before me shows that, before deciding fault, ICBC obtained statements from both drivers. It also assessed the material damage to both vehicles to determine whether it matched, before making its February 29, 2020 decision about fault.
28. Mr. DesRoches says ICBC is dishonest because it has not produced photos of any damage or photos from the repair shops. I disagree, because ICBC submitted photos of both vehicles in this dispute. I give no weight to Mr. DesRoches' unsupported allegation that the respondents are lying or trying to make any "side money" from the car accident or this dispute, as he has provided no evidence or even a valid explanation of how any "side money" would result from a vehicle damage accident.

29. I disagree with Mr. DesRoches that ICBC should have had an independent third party assess the damage to each car to determine whether the damage matched. I find ICBC already assessed the damage and has no obligation to obtain another opinion, particularly given the minor nature of this accident. I also find Mr. DesRoches has not explained how such a third-party assessment would result in any different opinion than the one given by SW. Further, I find it was open to Mr. DesRoches to obtain his own damage assessment opinion if he wished to do so.
30. On balance, I find ICBC had a reasonable basis for its internal determination of fault. While I acknowledge that Mr. DesRoches disagrees with ICBC's conclusion, I find that ICBC did not breach its statutory obligations or contract of insurance. I dismiss Mr. DesRoches' claim against ICBC.

### ***Remedy***

31. As I have found Mr. DesRoches 100% at fault for the accident, I find he is not entitled to any damages. I dismiss his claim against Ms. Contini.
32. Even if I had found Mr. DesRoches was not at fault for the accident, I would not have ordered his claimed \$1,600 for increased insurance premiums. Although Mr. DesRoches says this insurance premiums were increased, he does not explain when that occurred, what the increase was, and whether it was because of this particular accident. Neither did Mr. DesRoches provide any evidence quantifying his loss. So, I would have found that Mr. DesRoches failed to prove his claimed damages.
33. 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. DesRoches was unsuccessful in this dispute, I dismiss his claim for CRT fees.
34. Mr. DesRoches claimed \$500 as dispute-related expenses for time spent dealing with the dispute. CRT rule 9.5(5) says that the CRT will only order compensation for time spent dealing with a dispute in extraordinary circumstances, which I find do not exist here. So, even if Mr. DesRoches had been successful in his dispute, I would not have



ordered reimbursement of \$500 as a dispute-related expense. I dismiss this \$500 expense claim. The successful respondents did not pay any CRT fees or claim reimbursement of any dispute-related expenses.

## **ORDER**

35. I dismiss Mr. DesRoches' claims and this dispute.

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Sherelle Goodwin, Tribunal Member