



# Civil Resolution Tribunal

Date Issued: August 17, 2021

File: SC-2020-007612

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Permiakov v. ICBC*, 2021 BCCRT 899

BETWEEN:

NIKITA PERMIAKOV

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
STEPHEN SEPHTON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This small claims dispute is about liability for a motor-vehicle accident. The drivers were the applicant, Nikita Permiakov, and the respondent, Stephen Sephton. The respondent, the Insurance Corporation Of British Columbia (ICBC) internally determined that both parties were 50% at fault for the accident. Mr. Permiakov alleges

that Mr. Sephton was 100% at fault. He claims \$1,500 as compensation for car repairs.

2. Both ICBC and Mr. Sephton disagree. They say the drivers provided 2 different versions of events and neither can be independently verified. They say assigning 50% liability to each driver for the collision is therefore appropriate. ICBC also says Mr. Permiakov raised no specific claims against it and that ICBC paid for collision repairs.
3. Mr. Permiakov represents himself. An ICBC employee represents both ICBC and Mr. Sephton.
4. For the reasons that follow, I dismiss Mr. Permiakov's claims.

## **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. 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

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.

## **ISSUE**

9. The issue in this dispute is whether Mr. Sephton was partially or fully responsible for the accident, and if so, what remedies are appropriate.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Permiakov must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed facts. The accident occurred on May 20, 2020. Mr. Sephton and Mr. Permiakov were travelling westbound on Highway 1 in the vicinity of Abbotsford, BC. At some point their vehicles collided. The photos show the collision damaged Mr. Sephton's vehicle near the wheel on the front passenger side. Other photos show the collision damaged Mr. Permiakov's vehicle on the rear driver side area.
12. Mr. Sephton took the nearest exit onto Clearbrook Road. Mr. Permiakov followed him and phoned 911. Mr. Sephton then stopped his vehicle in a public parking lot along

Clearbrook Road. Mr. Permiakov entered the same lot and also stopped. They waited in their cars without speaking to each other. The police arrived a few minutes later. A June 17, 2020 autobody receipt shows ICBC subsequently paid for Mr. Permiakov's car repairs.

***Was Mr. Sephton partially or fully responsible for the accident?***

13. Mr. Permiakov provided a telephone statement to ICBC on June 25, 2020. ICBC sent him a written copy to review and sign. Mr. Permiakov did not sign it, but also did not say any parts of it were inaccurate in this dispute. The statement also describes the accident in greater detail than Mr. Permiakov's submissions. So, I place substantial weight on the statement.
14. Mr. Permiakov says the following in the statement. At the time of the accident Mr. Permiakov was in the leftmost of 2 westbound lanes on highway 1. Mr. Sephton had been following immediately behind him for 2 or 3 minutes. Mr. Sephton then tried to pass on the left using the highway shoulder. Mr. Sephton crossed a solid yellow line to do so. While attempting to pass, Mr. Sephton collided with Mr. Permiakov in the damaged areas shown in the photographs.
15. Section 151(b) of the *Motor Vehicle Act* (MVA) says a driver who is driving a vehicle on a laned roadway must not drive it from one lane to another if that action necessitates crossing a solid line. So, I find that under Mr. Permiakov's version of events, Mr. Sephton would be 100% at fault for the accident.
16. Mr. Sephton also provided a telephone statement to ICBC on May 21, 2020. He says the following in his statement. Mr. Sephton was travelling in the leftmost of 2 lanes on highway 1. Mr. Permiakov changed lanes to get directly in front of Mr. Sephton. Mr. Permiakov then "slammed into his brake". Mr. Sephton passed Mr. Permiakov on the right and entered the leftmost lane again. Mr. Permiakov then passed Mr. Sephton to get directly in front of Mr. Sephton again. Like before, Mr. Permiakov "slammed on his brake". Mr. Permiakov then started to change into the rightmost lane. Mr. Sephton continued forward, and as he was about to pass Mr. Permiakov, Mr. Permiakov

entered the leftmost lane again. Their vehicles then collided in the damaged areas shown in the photographs.

17. Section 151(a) of the MVA says a driver who is driving a vehicle on a laned roadway must not drive it from one lane to another when only a broken line exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle. I find that under Mr. Sephton's version of events, Mr. Permiakov would be 100% at fault for the accident. This is because he allegedly changed lanes when it was not safe to do so.
18. The parties do not dispute that accepting Mr. Permiakov's version of events would mean Mr. Sephton is 100% liable and vice versa.
19. Mr. Permiakov says his version of events is more credible. He says this is because Mr. Sephton admitted liability to the police. A May 20, 2020 police report says that Mr. Sephton stated both drivers were involved in a "road rage incident". The report says Mr. Sephton then admitted that he "crossed three lanes and struck [Mr. Permiakov's] vehicle while they were both travelling". Mr. Sephton says in this dispute that the police misunderstood him. He explains that he told the police that there were 3 lane changes that took place before the accident.
20. On balance, I find it more likely than not that the police misunderstood or misheard Mr. Sephton. Both drivers described to ICBC an accident that did not involve Mr. Sephton crossing 3 lanes. It is undisputed that the accident occurred in an area of highway 1 that only has 2 lanes. Mr. Sephton also described 3 lane changes in his statement to ICBC. This is consistent with Mr. Sephton's explanation for the discrepancy in this dispute. I therefore place little weight on the police report.
21. Mr. Permiakov points out that he called 911. He also says Mr. Sephton "fled" the accident scene. He says the CRT should conclude from this that Mr. Sephton was at fault. I do not find the call to be determinative of what happened in the accident. I also find it unproven that Mr. Sephton was attempting to flee to avoid liability. This is because after exiting the highway he waited in the parking lot.

22. Mr. Permiakov also said the damage to the cars supports his version of events. I disagree, as ICBC provided a January 18, 2021 email from RK, a materials engineer. I find the email to be expert evidence under CRT rule 8.3 as RK described his qualifications in a separate document. These qualifications included collision reconstruction work. RK wrote to ICBC that the impact did not provide any physical evidence that would “point to either driver changing direction laterally into the other”.
23. Given the above, I find there is an evidentiary tie about which version of events is accurate. As Mr. Permiakov has the burden to prove his claims, I dismiss them.
24. I note that in reply arguments, Mr. Permiakov said ICBC had no interest in understanding what happened because it wrongly referred to his car as a Mercedes in an internal communication. Photos show he drove a Lexus. Mr. Permiakov also said ICBC wrongly charged him his full deductible and not half his deductible. I find these to be allegations that ICBC breached its duty of good faith or contract of insurance. However, as Mr. Permiakov raised these allegations late and not in the Dispute Notice, I do not find these claims to be properly before me to decide as issues in this dispute.
25. 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. I see no reason in this case not to follow that general rule. The respondents did not pay any CRT fees or dispute-related expenses. So, I do not order any reimbursement for the parties.

## **ORDER**

26. I dismiss Mr. Permiakov’s claims and this dispute.

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David Jiang, Tribunal Member