



# Civil Resolution Tribunal

Date Issued: August 27, 2021

File: SC-2021-001328

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johrendt v. ICBC*, 2021 BCCRT 941

BETWEEN:

NANCY JOHRENDT

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA,  
WILLIAM MELLORS, and SANDRA MELLORS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 31, 2020 in Coquitlam, B.C. The applicant, Nancy Johrendt, and the respondent, William Mellors, were both driving eastbound on Highway 7 (Lougheed Highway) when their 2 vehicles collided. Mrs. Johrendt says that she was safely moving from

the left lane of 3 lanes into the middle lane when Mr. Mellors drove erratically into the passenger side of her vehicle. Mrs. Johrendt says that Mr. Mellors is solely responsible for the accident. She claims \$2,463.38 for her vehicle repairs.

2. The respondent Sandra Mellors is the co-owner of the vehicle Mr. Mellors was driving. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles. ICBC internally concluded that each driver was 50% responsible because neither vehicle was established in the middle lane when the vehicles collided. ICBC's fault determination is not binding on me.
3. The respondents rely on dashcam footage, which they say show Mr. Mellors moving from the right lane into the middle lane while Mrs. Johrendt was moving from the left lane into the middle lane when they collided. ICBC also says that it is not a proper respondent in this dispute.
4. Mrs. Johrendt is self-represented. An ICBC employee represents all 3 respondents.

## **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. I note that in the original Dispute Notice, Mrs. Johrendt's requested remedy was for reimbursement of her insurance deductible, which she has not yet paid. During facilitation, Mrs. Johrendt amended the Dispute Notice to claim for the estimated cost of her vehicle repairs, discussed further below.
10. I will briefly address ICBC's submission that it is not a proper respondent to this dispute. The CRT has consistently found that an insured may claim against ICBC if they believe ICBC did not meet its statutory or contractual obligations to reasonably investigate an accident. I agree with this approach. However, Mrs. Johrendt says only that she disagrees with how ICBC assessed the evidence. She does not argue that ICBC should be liable because of any contractual or statutory breach. I find Mrs. Johrendt's claim is solely about who was at fault for the collision. I find that the only proper respondents for this claim are Mr. and Mrs. Mellors (see *Kristen v. ICBC*, 2018 BCPC 106). So, I dismiss Mrs. Johrendt's claims against ICBC.

## **ISSUES**

11. The issues in this dispute are:
  - a. Who is responsible for the accident?
  - b. Is Mrs. Johrendt is entitled to any damages?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, as the applicant, Mrs. Johrendt must prove her claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to provide context for my decision.

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

13. The following facts are undisputed. The accident occurred on October 31, 2020 at about 12:50 p.m. on eastbound Lougheed Highway near the intersection with United Boulevard. This part of Lougheed Highway has 2 through lanes, and traffic turning left from United Boulevard has its own lane, which becomes a third eastbound lane on Lougheed Highway. The far-left lane then becomes a left turn lane at the next intersection with Colony Farm Road.

14. Mrs. Johrendt turned left from United Boulevard and was in the far-left lane on Lougheed Highway. There is initially a barrier separating the far-left lane from the 2 through lanes. When the barrier ends, for a short distance there is a solid white line between the far-left and middle lane, which then becomes a broken white line. The parties agree that Mrs. Johrendt was changing lanes into the middle lane when her vehicle was struck on the passenger side by Mr. Mellors' vehicle.

15. Mrs. Johrendt says that before she started her lane change, she checked over her right shoulder and saw a vehicle far behind her in the middle lane. She says the car was far enough back that she could safely complete the lane change. Mrs. Johrendt says she turned on her right turn signal and started her lane change as soon as the solid line separating the left and middle lanes transitioned to a broken line.

16. Mrs. Johrendt says there were no vehicles beside her as she continued to merge into the middle lane. Mrs. Johrendt says that her vehicle occupied the majority of the middle lane when Mr. Mellors' vehicle suddenly "careened" into the front passenger side of her vehicle. Mrs. Johrendt does not otherwise say where Mr. Mellors' vehicle came from.

17. Mrs. Johrendt says that Mr. Mellors hit her vehicle's front passenger side wheel area twice, the first time with his vehicle's front driver's side tire, and the second time with his vehicle's rear driver's side wheel and wheel well. I find the photographs in evidence show that Mrs. Johrendt's vehicle had black scuff marks and scratches or cracking on the bottom corner of the passenger side front wheel well. The damage to Mr. Mellors' vehicle included a scratched front driver-side bumper, as well as scratches and scuff marks on his rear passenger side wheel and what appears to be a black "burn mark" or rubbing damage to the back of the rear wheel well.
18. ICBC's file notes show that when Mr. Mellors provided his statement to ICBC on the day of the accident, he told ICBC he was driving in the middle of 3 lanes. He stated that he saw a vehicle in front of him in the lane to his left, and that he saw the other car start to move to the right. Mr. Mellors stated that he kept driving straight in his lane, and when he was beside the other car, it kept coming into his lane and the front passenger side fender of the other vehicle hit his driver side fender, rear quarter panel, and rear tire.
19. Mrs. Johrendt's vehicle was equipped with a dashcam. The dashcam footage starts after Mrs. Johrendt had completed her left turn and was proceeding in the far-left lane, eastbound on Lougheed Highway. There is a solid white line to Mrs. Johrendt's right, separating her lane from the 2 eastbound through lanes. The footage shows a vehicle several car lengths in front of Mrs. Johrendt that merged into the middle lane after the line separating the left and middle lanes becomes a broken line.
20. The dashcam footage shows there was no traffic in the middle and far-right lanes between Mrs. Johrendt's vehicle and the vehicle that merged ahead of her. However, the camera angle does not show whether there were any vehicles directly beside or behind Mrs. Johrendt in the other 2 lanes as she travelled in the far-left lane.
21. When the line separating the left and middle lanes becomes a broken line, the dashcam footage shows that Mrs. Johrendt's vehicle started moving to the right, into the middle lane. I find that Mrs. Johrendt's lane change was gradual and not sudden. When Mrs. Johrendt's vehicle was approximately three-quarters into the middle lane,

the nose of another vehicle comes into view immediately to Mrs. Johrendt's right. The other vehicle is straddling the far-right lane and the middle lane, moving to the left, into the middle lane. The other vehicle was moving faster than Mrs. Johrendt and, as it passed her, its rear driver's side hit the front passenger side of Mrs. Johrendt's vehicle. The other vehicle then veered into the far-right lane and Mrs. Johrendt completed her lane change into the middle lane, where the footage ends.

22. ICBC's notes show that an ICBC adjuster contacted Mr. Mellors on November 2, 2020 to discuss the dashcam footage. Mr. Mellors confirmed his previous statement that he was travelling in the middle lane when Mrs. Johrendt changed lanes into him. Even when ICBC advised Mr. Mellors that the dashcam footage appears to show him moving into the middle lane from the right lane, Mr. Mellors maintained that he did not move out of the middle lane before the collision.
23. I find that Mr. Mellors' statements to ICBC that he was established in the middle lane and that Mrs. Johrendt changed lanes into his vehicle, are inconsistent with the dashcam footage of the accident. Mr. Mellors stated that he was behind Mrs. Johrendt before she started her lane change, and that he saw her start to move toward the middle lane. If the accident happened as Mr. Mellors said, I would expect to see damage to the rear or side of Mrs. Johrendt's vehicle as it impacted Mr. Mellors' vehicle, but that is not the case.
24. More significantly, the dashcam footage shows Mr. Mellors' vehicle was partly in the far-right lane, and he was moving toward the middle lane when he collided with Mrs. Johrendt's vehicle. I find Mr. Mellors did not provide a satisfactory explanation of the discrepancy between his statement and what is shown in the dashcam footage. So, I do not accept Mr. Mellors' version of the accident.
25. The repair estimate for Mrs. Johrendt's vehicle confirmed that her vehicle was equipped with a "side blind zone alert" mechanism. I accept Mrs. Johrendt's evidence that her vehicle did not alert her of any vehicles in her blind spot as she moved into the middle lane. I also accept Mrs. Johrendt's evidence that she checked her right side mirror while completing her lane change and did not see any cars beside her.

26. Therefore, I find the most likely explanation for the accident is that Mr. Mellors was travelling in the far-right lane, and he attempted to change lanes while Mrs. Johrendt was also changing lanes.
27. I find the following sections of the *Motor Vehicle Act* (MVA) are relevant to this dispute:
- a. Section 144(1) says a person must not drive on a highway without due care and attention, without reasonable consideration for others using the highway, or at a speed that is excessive relative to the road, traffic, visibility, or weather condition.
  - b. Section 151(a) prohibits drivers from changing lanes over a broken line unless the movement can be done safely and “will in no way affect” another vehicle’s travel.
28. As noted, Mr. Mellors admitted to ICBC on the day of the accident that he was behind Mrs. Johrendt and saw her start to change lanes. I accept this part of Mr. Mellors’ statement because, as noted, the dashcam footage shows Mr. Mellors was travelling faster than Mrs. Johrendt. So, I find Mr. Mellors was likely behind Mrs. Johrendt in the far-right lane when she started changing lanes.
29. Mrs. Johrendt also provided a photo of a yellow traffic sign on the left side of Lougheed Highway warning straight through drivers of merging traffic from the left, where Mrs. Johrendt made her left turn. The respondents did not dispute the presence of this sign. Given this sign, I find Mr. Mellors should have anticipated that Mrs. Johrendt would likely be moving into the middle lane when the line separating the left-most lane became a broken line.
30. I find that Mrs. Johrendt was there to be seen in front of Mr. Mellors, as she made a gradual and predictable lane change. I also find Mrs. Johrendt was approximately three-quarters of the way into the middle lane when Mr. Mellors came up quickly from behind her, passed her while he was still largely in the far-right lane, and collided with the front of her vehicle as he tried to complete his lane change.

31. On balance, I find Mr. Mellors was driving without due care and attention, in breach of section 144 of the MVA. I also find that Mr. Mellors breached MVA section 151(a) by changing lanes when it was unsafe to do so. I find Mr. Mellors was negligent and he bears responsibility for the accident.
32. Turning to Mrs. Johrendt's actions, the respondents argue that she was not yet established in her lane when the vehicles collided, so she was still in the process of changing lanes. I infer that because the vehicles collided during her lane change, it is the respondents' position that Mrs. Johrendt was negligent because her lane change could not be safely completed, in breach of section 151(a) of the MVA.
33. I disagree with the respondents. I find that Mrs. Johrendt properly shoulder checked before starting her lane change and checked her mirrors while moving into the middle lane. I find Mrs. Johrendt was entitled to rely on traffic behind her in the far-right lane to see her and to not move into the middle lane while she was changing lanes.
34. Drivers are only required to guard themselves against outcomes that a reasonable person should have foreseen (see *Ferguson v. Yang*, 2013 BCSC at paragraph 43). I agree with Mrs. Johrendt's description of Mr. Mellors' driving as "erratic", and I find Mrs. Johrendt could not have reasonably anticipated Mr. Mellors' actions. To find Mrs. Johrendt negligent, I find it must be shown her conduct did not meet the standard of a reasonable driver in the circumstances. I find the respondents have not shown there were other reasonable actions Mrs. Johrendt should have taken to avoid the accident.
35. Therefore, I find Mr. Mellors 100% liable for the accident.

### ***Damages***

36. Although I have made a different liability finding than ICBC, I find Ms. Johrendt has not proven her claimed damages.
37. Mrs. Johrendt claims \$2,463.38 for her vehicle damage. The preliminary repair estimate in evidence shows a gross repair total of \$2,763.38, less a \$300 deductible to arrive at the claimed \$2,463.38. However, in a November 17, 2020 letter to Mrs.



Johrendt, ICBC confirmed that she would have to pay \$150, which was 50% of her collision deductible, to have her vehicle repaired.

38. There is no evidence before me that Mrs. Johrendt has had her vehicle repaired or that she has paid any part of her deductible. Given my finding on liability, I expect Mrs. Johrendt will not have to pay anything to have her vehicle repaired. I find Mrs. Johrendt has not proven she has suffered any loss, or that she will sustain a future loss, based on my finding that she was not at fault for the accident. I dismiss Mrs. Johrendt's claim for vehicle damage.
39. 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. Despite my findings about accident fault, Mrs. Johrendt was ultimately unsuccessful because I dismissed her claims for failure to prove damages. So, I find she is not entitled to reimbursement of any CRT fees or dispute-related expenses. The successful respondents claim no dispute-related expenses.

## **ORDER**

40. I dismiss Mrs. Johrendt's claims, and this dispute, because damages are unproven.

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Kristin Gardner, Tribunal Member