



# Civil Resolution Tribunal

Date Issued: September 29, 2021

File: SC-2021-004984

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cader v. ICBC*, 2021 BCCRT 1049

Default decision – non-compliance

**B E T W E E N :**

SAHUL CADER

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA and ELVIRA  
PADILLA

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant Sahul Cader because of their non-compliance with the CRT's mandatory directions as required, as discussed below.
2. This dispute is about alleged vehicle damage. The applicant says the respondent Elvira Padilla backed into their vehicle causing damage to it. The applicant says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly identified the vehicle damage.
3. The applicant is self-represented in this dispute. ICBC and Elvira Padilla are represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager (CM) may refer the dispute to a CRT member for resolution and the CRT member may:
  - a. Hear the dispute in accordance with any applicable rules,
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. The CM has referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.

6. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. For the following reasons, I dismiss the applicant's claims.

## **ISSUES**

9. The first issue is whether the applicant is non-compliant with the CRTA and the CRT's rules.
10. If the applicant is non-compliant, the second issue is whether I should decide this dispute without the applicant's further participation, refuse to resolve it, or dismiss it.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

11. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 5.1 to 5.4, and 7.1 to 7.4. This is despite multiple attempts by the CM to contact the applicant with a request for a reply.
12. The applicant submitted their application for dispute resolution on June 22, 2021, which included their email address and phone number to be used for this dispute. As shown on the Dispute Notice, the applicant says Elvira Padilla damaged their vehicle by backing into it. They say ICBC "wrongly identified the problem" by focusing its

investigation on the incorrect location on their vehicle. The applicant seeks payment of \$1,500 to repair the alleged vehicle damage.

13. In Elvira Padilla's Dispute Response, they denied backing into the applicant's vehicle or damaging it. In ICBC's Dispute Response, it said it is not the proper party to this dispute, and that the applicant's claims are against Elvira Padilla.

14. The CM provided details of the applicant's non-compliance, as follows:

- a. On August 12, 2021 the CM emailed the applicant welcoming them to the facilitation stage of the CRT's dispute resolution process. The email instructed the applicant to check their email inbox daily, and to respond to all email requests within 48 hours unless otherwise specified. The CM asked the applicant to confirm their preferred title and pronoun, and their availability for a phone call at a specified time. The CM told the applicant to respond by 8:00 a.m. on August 23, 2021.
- b. On August 23, 2021, the CM emailed the applicant stating that the response deadline from her previous email had passed. The CM warned that if the applicant repeatedly failed to respond to CRT communications, the dispute could proceed without the applicant's further participation, and could be dismissed. The CM said they would phone the applicant at 10:30 a.m. that day, but said if they could not reach them, the applicant must respond by 4:00 p.m. the following day.
- c. On August 24, 2021 at 9:00 a.m., the CM phoned the applicant and left a voicemail instructing them to respond to the CM's emails by 4:00 p.m. on August 25, 2021.
- d. On September 3, 2021, the CM emailed the applicant to schedule a phone call and told them to respond by 9:00 a.m. on September 7, 2021. The CM warned that if the applicant failed to respond the CM may defer the dispute to a tribunal member who may decide the dispute without the applicant's participation under section 36 of the CRTA.

- e. On September 7, 2021, the CM phoned the applicant and left a voicemail explaining that if they did not respond by email to her communications, they could be found non-compliant.
  - f. On September 7, 2021, the CM emailed the applicant asking for confirmation of their availability for a phone call. The CM told the applicant to respond by 9:00 a.m. on August 14, 2021, which I find is a typographical error, and was likely meant to state September 14, 2021. The CM warned that if the applicant did not respond a tribunal member may decide the dispute without their participation under section 36 of the CRTA.
  - g. The applicant did not respond to any of the CM's emails or voice messages.
15. The CM then referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.
16. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for their failure to respond to the CM's requests for contact. As noted above, the CM warned the applicant 3 times in writing and once by voicemail about the risks of their failure to comply with the CM's directions. Despite the typographical error in the CM's September 7, 2021 email, I find the applicant had ample opportunity to respond to the CM's emails and phone calls and failed to do so. I turn then to whether I should continue to hear this dispute, or whether I should refuse to resolve or dismiss it.

***Should the CRT hear the dispute without the applicant's further participation?***

17. As noted above, the applicant initiated this CRT dispute. The applicant has provided no explanation about why they have failed to communicate with the CRT as required. Parties are told at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the CM's communications, including emails. I find the CM made a reasonable number of

contact attempts, through both the email address and phone number that the applicant provided. Given the multiple attempts, I find it is more likely than not that the applicant knew about the CM's attempts and failed to respond.

18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,
- c. The nature and extent of the non-compliance,
- d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
- e. The effect of the non-compliance on the CRT's resources and mandate.

20. Based on the evidence described above, I find that the applicant had proper notice of the CM's attempts to contact them, and knew the consequences if they failed to

respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute. In the circumstances, I find it is appropriate to dismiss the applicant's dispute.

21. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
22. The applicant's non-compliance here also occurred early in the facilitation process, and the parties have not provided any evidence or submissions. The applicant effectively abandoned the process after receiving the respondent's Dispute Response.
23. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows they do not want the CRT's assistance in resolving their claim.
24. Although not binding on me, I agree with and apply the CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
25. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.

26. In deciding to dismiss the claims rather than refuse to resolve them, I have put significant weight on the following factors:
- a. The extent of the non-compliance is significant,
  - b. The non-compliance occurred early on in the CRT process,
  - c. The respondents are not prejudiced by such an order, and
  - d. The need to conserve the CRT's resources.
27. Therefore, I dismiss the applicant's claims and this dispute.
28. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find they are not entitled to a refund of paid CRT fees. The successful respondent did not pay any CRT fees or claim expenses.

## **ORDER**

29. I dismiss the applicant's claims and this dispute.

---

Sarah Orr, Tribunal Member