



# Civil Resolution Tribunal

Date Issued: January 18, 2022

File: SC-2021-001121

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stevens v. ICBC*, 2022 BCCRT 65

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

BARBARA STEVENS

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA and NEAL  
THIESSEN

**RESPONDENTS**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This small claims dispute is about a motor vehicle accident that occurred on the night of October 31, 2020. The applicant Barbara Stevens collided with a parked tow truck on Highway 16 just outside Vanderhoof BC. The respondent Neal

Thiessen was the tow truck driver. The tow truck's owner is not a party to this dispute.

2. Mr. Thiessen was blocking both lanes of the highway as he was removing a vehicle from the ditch. Mrs. Stevens was driving west. She rounded a corner on the highway and saw the truck deck across her lane but was unable to stop before colliding with it. She says that the accident was entirely Mr. Thiessen's fault because he did nothing to warn westbound drivers that the lane was blocked.
3. The respondent Insurance Corporation of British Columbia (ICBC) insures both drivers. ICBC internally determined that Mrs. Stevens was fully responsible for the accident. In this dispute, the respondents say that Mr. Thiessen took all necessary precautions. They say that Mrs. Stevens simply failed to see and appropriately react to the tow truck, which was flashing amber lights at the time. ICBC also says that it is not a proper respondent in this dispute.
4. Mrs. Stevens's vehicle was a total write off. ICBC reduced her payout by a \$1,000 deductible. Mrs. Stevens asks for an order that the respondents reimburse her deductible. The respondents ask that I dismiss her claims.
5. Mrs. Stevens is self-represented. An ICBC employee represents both respondents.

## **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 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, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
10. I will briefly address ICBC's liability. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligation to reasonably investigate an accident, based on the BC Court of Appeal case *Innes v. Bui*, 2010 BCCA 322. I agree with this approach. However, Mrs. Stevens does not make any allegations about ICBC or its investigation. Rather, I find that her claim is only about who was at fault for the accident. I find that ICBC is not a proper respondent for this claim. See *Kristen v. ICBC*, 2018 BCPC 106. For this reason, I dismiss Mrs. Stevens's claims against ICBC.

## **ISSUE**

11. The issue in this dispute is who was responsible for the accident.

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, Mrs. Stevens as the applicant must prove her case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

13. Most of the facts are not in dispute. The accident occurred on Highway 16 west of Vanderhoof, BC, at 10:00 pm. Highway 16 has a single lane of traffic each direction. Mrs. Stevens was driving west, out of town. The accident occurred just after a slight S-curve in the highway. There are no lights on this stretch of highway.
14. Mrs. Stevens says that before she entered the first curve, she saw flashing amber lights in the eastbound lane in the distance. She assumed that they were on a wide load or slow-moving truck heading east, which she says are common on this highway. She also says that she saw taillights in her lane, also from a distance. Because of the curve in the highway, the amber lights disappeared from Mrs. Stevens's view. In other words, Mrs. Stevens says that her sightline of the tow truck was impaired by the highway's curve. Based on a map Mrs. Stevens drew, the curve started about 300 meters from the accident site.
15. Just before the second curve of the S-curve, the speed limit increases from 80 km/h to 100 km/h. Again, according to Mrs. Stevens's map, this was roughly 100 meters from the accident site. At this point, she began speeding up, but as she rounded the curve she slowed down again because she saw movement in the ditch to her right, which was illuminated by her headlights. She later came to believe this was Mr. Thiessen. Almost immediately after this, she saw the truck deck across the road but did not have time to stop. She says that by the time she saw the truck deck, she only had about 6 feet to react. She says that by this point she was going between 80 km/h and 85 km/h. Even though her vehicle was badly damaged, Mrs. Stevens was not seriously hurt.
16. Mr. Thiessen's tow truck was parked at about a 45-degree angle, blocking both lanes of the highway. His cab was facing roughly west in the eastbound lane and his tail was facing roughly east in the westbound lane. The only thing Mr. Thiessen did to warn drivers about his tow truck was turn on his amber flashing lights, which were on the truck's cab. At the time of the accident, the RCMP was already on its way because of the car in the ditch. It is unclear who called the RCMP.

17. None of the above facts are disputed. I note that the parties dispute whether Mr. Thiessen was in the cab of the tow truck (as Mr. Thiessen says) or in the ditch (as Mrs. Stevens says) when the accident happened. They also dispute whether the other car was still in the ditch (as Mrs. Stevens says) or already pulled out (as Mr. Thiessen says). I find that neither of these facts is relevant to the outcome of this dispute, although I note that in the accident scene photos it does not appear that Mr. Thiessen had pulled the car out of the ditch as he alleges.
18. Mrs. Stevens argues that Mr. Thiessen was solely responsible for the accident because he failed to warn westbound motorists that he was entirely blocking the westbound lane. Mrs. Stevens argues that by parking the tow truck angled west with the amber lights on, the tow truck warned eastbound traffic that the road was closed because the amber lights were in the eastbound lane. However, there were no lights or warnings in the westbound lane. Mrs. Stevens argues that westbound drivers would not be put on alert that the eastbound lane was closed just because there were flashing amber lights in the eastbound lane. Mrs. Stevens argues that Mr. Thiessen either should have set up warnings himself or waited for the RCMP to arrive before blocking traffic.
19. For their part, the respondents argue that the tow truck was there to be seen. They rely on the fact that the RCMP constable who first came on the scene saw the flashing amber lights and reacted accordingly. I find this unpersuasive because the RCMP constable knew in advance that the tow truck was there because they were specifically called out to help with the car in the ditch.
20. The respondents also argue that Mrs. Stevens should have been able to tell the difference between a wide load or slow-moving truck, which would have been moving, and the tow truck, which was stopped. The respondents argue that Mrs. Stevens should have slowed down when she saw the flashing amber lights, even though they were not in their lane, well before the accident site.
21. The respondents rely on the fact that the RCMP later issued Mrs. Stevens with a ticket for violating section 47.02 of the *Motor Vehicle Regulations* (MVR). Section

47.02 requires drivers to slow to 70 km/h when approaching or passing an “official vehicle”. Under section 4.28(5) of the MVR, an “official vehicle” includes a tow truck in the process of connecting or disconnecting a vehicle. Mrs. Stevens disputed the ticket. The outcome of that dispute is not before me. I discuss this in more detail below.

22. Mrs. Stevens relies on the Ministry of Transportation and Infrastructure’s Traffic Management Manual (TMM), which, among other things, sets out safety requirements and guidelines for tow truck operations that impede traffic. While she does not use these terms, I find that she relies on the TMM as evidence of the standard of care of a reasonable tow truck driver. The respondents do not say anything about the relevant standard of care or the importance of the TMM.
23. I note that the court has found that the relevant parts of the TMM’s predecessor, the Traffic Control Manual, “greatly informed” the standard of care of a reasonably prudent contractor in *Van Tent v. Abbotsford (City)*, May 25, 2012, Court File No. M060300, affirmed 2013 BCCA 236. I find that the same reasoning applies here. I accept that the TMM is persuasive evidence of the standard of care of a reasonable tow truck driver.
24. Section 19.1 of the TMM said that tow operations that will take more than 15 minutes require “additional traffic control”, the details of which depend on circumstances like the highway configuration and how much the operation will impede traffic. The TMM also said that tow truck drivers should not start a recovery until they have appropriate traffic control measures in place.
25. Relying on the TMM, I find that a reasonable tow truck driver must set up reasonable traffic control warnings if their operation will completely block a lane of travel before starting the recovery. Based on the TMM, I find that these warnings may include signs, flares, lights, or flaggers, again depending on the circumstances. According to the TMM, there are 2 main exceptions to the general requirement for a tow truck driver to set up traffic control warnings before an operation: when it is not safe to delay a tow operation or where the operation will take less than 15 minutes.

26. The difficulty here is that Mr. Thiessen's statement provides no detail about the recovery operation. While he says that he had already pulled the car out of the ditch, he does not say how long this took, how long he was blocking the highway before the accident, or how long the operation would have taken but for the accident. The police records do not establish how long before the accident the RCMP had been called. Mr. Thiessen does not say why he started the operation instead of waiting for the RCMP to arrive to help with traffic control. For example, he does not say whether there was a safety reason behind his decision to proceed immediately. Other than saying that the tow truck was there to be seen because the amber lights were flashing, the respondents do not say anything about whether Mr. Thiessen complied with the TMM or otherwise acted reasonably in the circumstances, even though Mrs. Stevens has consistently argued that he did not.
27. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not have supported their case. I find that an adverse inference is appropriate here because Mr. Thiessen's compliance with the TMM was clearly at issue. With that, I find that if Mr. Thiessen had expected the operation to take less than 15 minutes or determined that there was a safety reason to start the operation without setting up warnings to westbound traffic, he would have said so. In making this finding, I have assumed that Mr. Thiessen was aware of the TMM's requirements because of his profession. On the basis of that adverse inference, I find that the recovery of the vehicle from the ditch would have taken Mr. Thiessen more than 15 minutes and that there was no safety reason why Mr. Thiessen needed to immediately start removing the vehicle from the ditch. I therefore find that the TMM required Mr. Thiessen to warn westbound motorists that he was blocking their lane before starting the operation.
28. I therefore find that Mr. Thiessen should not have blocked the highway without either setting up reasonable traffic control warnings or waiting for the RCMP to arrive. I find that I do not need to determine exactly what the TMM required Mr.

Thiessen to do, because I agree with Mrs. Stevens that the flashing amber lights did not adequately warn westbound drivers. In this regard I rely primarily on the fact that the curvature of the highway blocked the sightlines of westbound drivers as they approached the blocked highway. I find that Mr. Thiessen should have either set up a warning (like a blinking hazard sign) in advance of the accident site to warn westbound drivers or waited for the RCMP to arrive before blocking the westbound lane. I find that Mr. Thiessen's actions were below the applicable standard of care because they created an unreasonable risk of harm. I find that the lack of warning was a cause of the accident because if there were clear advanced warnings that the lane was closed ahead, Mrs. Stevens would have reacted accordingly. I therefore find that Mr. Thiessen was negligent.

29. That does not end the matter, as I must assess whether Mrs. Stevens was also negligent.

30. I agree with the respondents that Mrs. Stevens breached section 47.02 of the MVR. Even though Mr. Thiessen did not adequately warn westbound drivers that their lane was blocked, I find that Mrs. Stevens still had an obligation to react reasonably to the flashing amber lights when she saw them in the distance. I find that section 47.02 of the MVR is relevant because it requires drivers to slow down when approaching flashing amber lights in an oncoming lane. I find that this shows that a reasonably prudent driver will approach flashing yellow lights with caution, even if they are in a different lane. Here, instead of slowing down, Mrs. Stevens started speeding up when the speed limit went from 80 km/h to 100 km/h. I find that she should have slowed down, especially since the curves in the road had blocked her view of the flashing amber lights. I find that Mrs. Stevens's failure to slow down as she approached the tow truck fell below the standard of a reasonable driver in the circumstances. By her own admission she did not see the tow truck until the last second. With that, I find that her speed was also a cause of the accident. I therefore find that Mrs. Stevens was contributorily negligent.



31. I turn then to the apportionment of liability. When 2 people are both negligent, their liability is divided based on fault or blameworthiness. This requires an assessment of how much each person's conduct fell below a reasonable standard. See *Alberta Wheat Pool v. Northwest Pile Driving Ltd.*, 2000 BCCA 505, at paragraph 46.
32. Here, I find that Mrs. Stevens's conduct was more blameworthy. Because Mr. Thiessen had turned on his amber flashing lights, I find he took the steps to warn traffic that he believed would be adequate. While I have found this belief mistaken, I find that it was not a deliberate error.
33. I find that Mrs. Stevens's failure to slow down as she approached the accident scene was a significant departure from the standard of care. I find it noteworthy that the TMM, which Mrs. Stevens relies on, does not require any traffic control measures for operations lasting less than 15 minutes or in emergencies. This shows that motorists should be aware that flashing amber lights might indicate a lane closure or similar dangerous situation, even if there are no other warnings.
34. I find Mr. Thiessen 20% liable and Mrs. Stevens 80% liable for the accident.
35. The parties agree that Mrs. Stevens's damages are \$1,000. I therefore order Mr. Thiessen to pay Mrs. Stevens \$200.
36. The *Court Order Interest Act* (COIA) applies to the CRT. The date that ICBC paid Mrs. Stevens for her written off vehicle is not in evidence, but ICBC made her an offer on November 10, 2020. Since this offer included the \$1,000 deductible, I find that this is a reasonable date for prejudgment interest to begin accruing. This equals \$1.07
37. 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. Mrs. Stevens was partially successful, so I find that she is entitled to reimbursement of half of her \$125 in CRT fees, which is \$67.50. She did not claim any dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

## ORDERS

38. Within 30 days of the date of this order, I order Mr. Thiessen to pay Mrs. Stevens a total of \$268.57, broken down as follows:
- a. \$200 in damages,
  - b. \$1.07 in pre-judgment interest under the COIA, and
  - c. \$67.50 for CRT fees.
39. Mrs. Stevens is entitled to post-judgment interest, as applicable.
40. I dismiss Mrs. Stevens's claims against ICBC.
41. 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.
42. 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.

---

Eric Regehr, Tribunal Member