



# Civil Resolution Tribunal

Date Issued: May 3, 2022

File: SC-2021-007996

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mikhlin v. ICBC*, 2022 BCCRT 517

BETWEEN:

EVGENY MIKHLIN

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on May 8, 2021 in Richmond, British Columbia. The applicant, Evgeny Mikhlin, was backing his wife's Hummer H3 out of a parking stall and admittedly struck the rear of a parked Tesla. The Tesla's owner is not named as a party in this dispute.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles involved in the accident. ICBC determined the accident damaged the Tesla, and held Mr. Mikhlin 100% responsible for that damage. Mr. Mikhlin argues ICBC failed to “carefully review” the accident details.
3. ICBC says it acted reasonably in investigating the accident and asks this claim be dismissed.
4. Mr. Mikhlin is self-represented. ICBC is represented by an employee.

## **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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that 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.
7. Section 42 of the CRTA says that 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.

### ***Remedy sought***

9. Initially in his Dispute Notice, Mr. Mikhlin sought an order finding him not liable for the accident, plus \$2,059, the alleged value of the Tesla's damage. CRT staff advise that during the tribunal decision process, Mr. Mikhlin sought to change his claim and instead ask for the difference in his increased insurance premiums, which he valued at \$500. However, no Amended Dispute Notice was issued, but staff indicated ICBC was informed of Mr. Mikhlin's change in requested remedy and ICBC said it would not be filing an Amended Dispute Response.
10. Generally, for procedural fairness reasons, I would not consider a significantly different remedy than what is set out in the Dispute Notice before me. However, given ICBC's position described above and my conclusions below, I find nothing turns on whether Mr. Mikhlin seeks reimbursement of the alleged vehicle damage, or of his increased insurance premiums.

### **ISSUE**

11. The issue in this dispute is whether ICBC acted reasonably in investigating the accident and assessing responsibility.

### **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant Mr. Mikhlin must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' evidence and arguments, I have only addressed what is necessary to explain my decision. I note Mr. Mikhlin did not provide any reply submissions, despite being given the opportunity to do so.

13. First, to the extent Mr. Mikhlin is claiming for the value of the Tesla's damage, I find his claim must fail for two reasons. One, there is no indication Mr. Mikhlin has paid any amount toward the Tesla's damage. Two, there is no evidence before me indicating what the value of that damage was. I have no jurisdiction under the CRTA section 118 to make a declaratory order, such as to say Mr. Mikhlin does not have to pay for that damage.
14. Next, to the extent Mr. Mikhlin claims for increased insurance premiums, I find it is unclear to what extent, if any, Mr. Mikhlin has paid any increased premiums. Although Mr. Mikhlin and ICBC both agree the accident would impact his premiums, Mr. Mikhlin has not shown what that increase was or will be. Mr. Mikhlin provided a copy of his insurance documents in effect from November 26, 2021 to November 25, 2022, for a cost of \$2,985, minus a \$171 "refund", totaling \$2,814. Mr. Mikhlin also provided a copy of his bank statement showing that on November 26, 2021 he paid ICBC \$3,314, and on November 29, 2021 received a \$171 refund, for a total payment of \$3,143. The difference between the two amounts is \$329. Mr. Mikhlin does not explain why he claims \$500 instead of the \$329 difference.
15. Additionally, it is unclear what the \$3,314 paid to ICBC on November 26, 2021 was specifically for. As there is no receipt or invoice in evidence to support the \$3,314, I am unsure why the amount paid that day is different than the \$2,895 as listed on Mr. Mikhlin's active insurance policy. Given this, I find Mr. Mikhlin has not proven his damages, so I find his claim must fail.
16. Even if Mr. Mikhlin had proven his damages, I would still have dismissed his claim. My reasons follow.
17. As noted, Mr. Mikhlin says ICBC "failed to do a professional and detailed examination" of the vehicles' damage. The evidence is that Mr. Mikhlin reversed his wife's Hummer in a parking lot and struck the Tesla with the Hummer's spare tire cover, as Mr. Mikhlin reported to ICBC. The ICBC estimator who reviewed the Hummer noted no damage on it. This estimator did not review the Tesla vehicle in person.

18. After both vehicles were inspected, ICBC asked Mr. Mikhlin for further photos with measurements of the height of the Hummer's spare tire cover, which Mr. Mikhlin provided. Upon review of these documents, the ICBC estimator determined that, given the height of the spare tire cover and the Tesla's damage, the Hummer could have caused the dent in the Tesla. As a result, ICBC held Mr. Mikhlin solely responsible for the Tesla's dent. However, scratches on the Tesla's bumper below the license plate were determined to be unrelated to the May 8, 2021 accident.
19. ICBC has a statutory and contractual obligation to conduct a fair and reasonable investigation of accident claims. ICBC owes Mr. Mikhlin a duty of utmost good faith, which requires ICBC to act fairly, both in how it investigates and assesses his claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55 and 93).
20. As noted in the Continuing Legal Education 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. Rather, an insurer must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information" (see: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
21. To succeed in his claim against ICBC, Mr. Mikhlin must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. So, the question is whether ICBC acted "properly or reasonably" in investigating the accident and administratively assigning sole responsibility against Mr. Mikhlin (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
22. Here, I find there is no indication ICBC breached its statutory obligations or its contract of insurance. The evidence shows that ICBC reviewed both involved vehicles, went back to Mr. Mikhlin for additional photographs and measurements, and came to a reasonable conclusion based on its investigation. Although Mr. Mikhlin argues ICBC ignored that the dent had "white paint transfer" while his vehicle was

yellow, ICBC says there is no evidence the “white residue” was paint, and not the Tesla’s prime undercover.

23. I acknowledge that Mr. Mikhlin does not agree with ICBC’s assessment. However, I find Mr. Mikhlin has not shown that ICBC’s investigation was unreasonable, that it failed to review relevant information, or that it did not fully consider the Tesla’s damage. I find Mr. Mikhlin has not proven ICBC breached its statutory obligations or its contract of insurance in investigating the accident damage and assessing responsibility.

24. Given all the above, I dismiss Mr. Mikhlin’s claims.

25. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Mikhlin was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. ICBC did not pay tribunal fees or claim any dispute-related expenses.

## **ORDER**

26. I order Mr. Mikhlin’s claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair