



# Civil Resolution Tribunal

Date Issued: May 30, 2022

File: SC-2021-009087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sykes v. ICBC*, 2022 BCCRT 630

**BETWEEN:**

DAVID SYKES

**APPLICANT**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

### **INTRODUCTION**

1. This small claims dispute is about insurance coverage for vehicle repairs following an alleged hit and run accident in Vancouver, BC. The applicant, David Sykes, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), wrongly determined that the damage to his rental car was not from a hit and run accident.

2. ICBC says the claimed vehicle damage is inconsistent with vehicle-to-vehicle contact, which is required for ICBC to accept a hit and run claim.
3. Mr. Sykes seeks a \$660 reimbursement for the increase in his insurance premiums. He also seeks to have ICBC reinstate his “gold star” rating (in other words, adjust his driver factor) and to reduce his insurance premiums to reflect the revised driver factor.
4. Mr. Sykes 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 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. In his submissions, Mr. Sykes refers to bank statements that he says are attached as pages A, B and C in support of his claimed damage. I note that these bank statements are not in evidence. However, given my finding below that Mr. Sykes has not proven

the vehicle's damage was caused by a hit and run, I do not need to consider the claimed damage.

9. Further, I note that both parties refer to the rental company's initial report to ICBC. This report is also not in evidence. It appears that ICBC intended to upload this document into evidence but instead uploaded a duplicate of their expert's report. Bearing in mind the principle of proportionality, the amount at issue in this dispute, and the remainder of the evidence before me, I have decided asking the parties to provide this report is not warranted. My ultimate conclusion turns on the expert evidence and the rental company's report is unlikely to alter that conclusion since it was not present at the time of the alleged hit and run.
10. Where permitted by CRTA section 118, 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. I find I have no jurisdiction under CRTA section 118 to order ICBC to adjust Mr. Sykes' driver factor or reduce his insurance premiums. This is because both requested orders are for injunctive relief, which are orders for a party to do or stop doing something. These requested orders are not related to the recovery of personal property nor are they for specific performance of an agreement relating to personal property or services under CRTA section 118. So, I decline to address these requested remedies in my decision.

## **ISSUES**

11. The issues in this dispute are:
  - a. Was the rental vehicle's damage caused by another vehicle? If so, what remedy is Mr. Sykes entitled to?
  - b. Did ICBC breach its statutory or contractual obligations in investigating what caused the vehicle's damage?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant, Mr. Sykes, must prove his claims on a balance of probabilities. I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

### ***Was the rental vehicle's damage caused by another vehicle?***

13. This dispute is about whether Mr. Sykes has coverage for the rental vehicle's damage under section 24 of the *Insurance Vehicle Act (IVA)*. Section 24 describes remedies available for hit and run accidents. Applied to this dispute, section 24 allows Mr. Sykes to claim against ICBC if an unknown vehicle caused the claimed damage.

14. Mr. Sykes says he parked the rental vehicle on the street outside of his residence in November 2019 before leaving for vacation. During Mr. Sykes' absence, the rental period expired and on November 21, 2019 his son returned the vehicle. On its return, the rental company noticed damage to the vehicle. The photographs in evidence show scrapes on the vehicle's left front corner.

15. Mr. Sykes says the damage must have occurred while the vehicle was parked on the street in front of his residence. He says he inspected the vehicle before leaving for his vacation and there was no damage at that time. He also says that his son did not cause the damage.

16. The rental company's subrogation claim documents show the vehicle's repairs were completed by November 30, 2019. Based on ICBC's claim file notes in evidence, I find that ICBC was first made aware of the vehicle's damage and the corresponding claim on or about December 13, 2019. Since the vehicle's damage was repaired before the claim was made to ICBC, ICBC says it reviewed photographs submitted by the rental company to determine the cause.

17. On December 19, 2019, ICBC's estimator, Steve Wolfe, determined the damage was not consistent with vehicle-to-vehicle contact and was caused by a single vehicle accident.

18. On August 17, 2020, Mr. Sykes called ICBC and asked ICBC to review the damage again. The next day, ICBC's Material Damage (MD) Dispute Manager, Drew White, reviewed the photographs and also found the damage was not consistent with a hit and run. In October 2020, Steve Wolfe reviewed further information provided by Mr. Sykes and again found the claimed damage remained consistent with a single vehicle accident.
19. As noted, the burden is on Mr. Sykes as the applicant to prove that the damage was likely caused by a hit and run, which means that he must prove the claimed damage was likely caused by vehicle-to-vehicle contact.
20. I find determining whether the vehicle's claimed damage resulted from vehicle-to-vehicle contact is beyond ordinary knowledge and so expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283).
21. Mr. Sykes has not provided an independent expert report. However, in his submissions, Mr. Sykes says that he is a retired Professional Engineer and based on his experience, he can confidently say that the damage would have been greater if the vehicle had hit something while moving. Though Mr. Sykes may have some expertise in this area, he has provided no evidence of his qualifications. Further, expert evidence from a party is not generally admissible under Rule 8.3(7) because the party is not neutral. So, I do not place any weight on Mr. Sykes' own opinion evidence.
22. ICBC's evidence includes a December 22, 2021 report of Harvey West, P. Eng, of CEP Forensic. The report includes Mr. West's curriculum vitae, setting out his qualifications. I find that Mr. West is a qualified independent expert under the CRT's rules on the causation issue before me. I allow and place significant weight on his opinion. Mr. West reviewed the photographs provided by ICBC and noted damage to the vehicle's left front corner with scrape marks to the front bumper cover that ranged from approximately 35 cm to 50 cm elevation. He says the coarse scrape marks were horizontal and appeared whitish from scratching the clear coat with one scrape mark containing robin-egg blue coloured paint transfer. Mr. West concluded that the visual

characteristics and the damage's location is more consistent with inadvertent contact with a concrete-like surface than by contact with another vehicle.

23. Since I have found that determining the cause of the vehicle's damage requires expert evidence, and since the only expert evidence before me is Mr. West's December 22, 2021 report, I find it likely the vehicle's claimed damage was not the result of vehicle-to-vehicle contact. So, I find it unproven the damage was likely the result of a hit and run and I dismiss this claim against ICBC.

***Did ICBC breach its statutory or contractual obligations in investigating what caused the vehicle's damage?***

24. I find Mr. Sykes argues, essentially, that ICBC did not act fairly or reasonably in investigating what caused the vehicle's damage. In the Dispute Notice, Mr. Sykes said ICBC failed to inspect the vehicle and assess the damage in person. He said ICBC should not have relied solely on photos provided by the rental company in making its decision. Mr. Sykes also alleged that ICBC wrongly reopened the file months after the damage occurred and changed its determination from a hit and run to a single vehicle accident.
25. ICBC says the vehicle was repaired before a claim was made to ICBC so it could not have inspected the damage in person. It further says its decision that the vehicle's damage was not consistent with vehicle-to-vehicle contact was made in December 2019, not months later.
26. Again, the onus is on Mr. Sykes to prove that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administering Mr. Sykes' insurance claim (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
27. ICBC owes Mr. Sykes a duty of good faith, which requires it to act fairly in how it investigates and assesses the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 33, 55 and 93). In *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 at paragraph 249, the court said that an insurer is not

expected to investigate a claim with perfect proficiency, but must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information”.

28. The evidence before me shows that ICBC did not know about the vehicle’s damage until after the vehicle was repaired. So, ICBC could not have inspected the vehicle in person. ICBC reviewed the photographs provided by the rental company in making its determination. I find that ICBC’s reliance on the photographs was reasonable and proportionate in the circumstances. The ICBC claim file notes show that ICBC also reviewed and considered additional information provided by Mr. Sykes in reassessing the damage’s cause and still found no evidence of vehicle-to-vehicle impact.
29. I find that there is no evidence that ICBC failed to properly investigate Mr. Sykes’ claim that the vehicle’s damage was caused by a hit and run. Further, there is no evidence that ICBC reopened the file and revised its determination as Mr. Sykes alleges.
30. So, I find that Mr. Sykes has not established that ICBC acted unreasonably or in bad faith in determining the damage’s cause and administering his claim. I find Mr. Sykes has not shown that ICBC breached its statutory obligations or its contract of insurance and dismiss this claim against ICBC.
31. 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. As Mr. Sykes was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. ICBC did not pay any fees. ICBC claims reimbursement of \$547.75 in dispute-related expenses for the cost of obtaining their expert report. I allow this, as I relied on this report and I find the amount reasonable.

## **ORDERS**

32. I dismiss Mr. Sykes’ claims.

33. Within 21 days of this decision, I order Mr. Sykes to pay ICBC \$547.75 in dispute-related expenses. ICBC is entitled to post-judgment interest, as applicable.
34. 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.
35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Nav Shukla, Tribunal Member