



# Civil Resolution Tribunal

Date Issued: August 23, 2022

File: SC-2022-000090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. ICBC*, 2022 BCCRT 948

BETWEEN:

BILL ROBERTSON and Rashidi Energy Developments Inc.

**APPLICANTS**

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 insurance coverage. The applicants, Bill Robertson and Rashidi Energy Developments Inc. (Rashidi), claim \$5,000 for damage to a 2005 Ford F350 truck owned by Rashidi, and driven by Mr. Robertson. The applicants say the truck was vandalized while parked outside Mr. Robertson's workplace.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), says the applicants are not entitled to any coverage for two reasons. First, ICBC says the applicants failed to abide by the terms of the insurance policy in reporting the accident and allowing ICBC to inspect the vehicle, and second, because the applicants have not proven the damage was a result of vandalism.
3. Mr. Robertson represents the applicants. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

6. 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.
7. 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.

### ***Late evidence and submissions***

8. Both parties submitted late evidence and lengthy submissions after the initial round of submissions completed. The parties each object to some extent to the other's late evidence and submissions. However, I find each party was able to review and respond to the other's additional information. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing the late evidence and submissions, so I allow it as I find it is relevant.

### **ISSUE**

9. The issue in this dispute is whether the applicants are entitled to insurance coverage for vehicle damage.

### **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. The background facts are not particularly disputed. On January 24, 2020, Mr. Robertson parked the truck behind his workplace in Abbotsford, British Columbia. When he left work, the truck was not running well and he had to pull over after a couple of blocks. He called around and was referred to Clyde Coffey, owner of East

Coast Auto Ltd. (ECA), whose shop was still open. Mr. Robertson drove his truck there and had it inspected. ECA found gasoline had been added to the truck's diesel fuel tank, causing the engine injectors to fail. On January 28, 2020, Mr. Robertson paid \$5,034.28 to ECA for the repairs. The applicants claim \$5,000 as reimbursement for these repairs, which is the CRT's small claims monetary limit.

12. As noted above, ICBC denied the applicants' claim. First, ICBC says the applicants failed to comply with Division 8 of the Autoplan Optional Policy by not promptly notifying ICBC of the damage and for failing to provide ICBC with a reasonable opportunity to inspect the vehicle. ICBC also argues the applicants have not proven the mechanical issue was a result of gasoline contamination, and instead says the injectors likely failed due to age and wear and tear.

### ***Insurance policy***

13. ICBC Autoplan Optional Policy, Division 8, section 5(1) says that if vehicle loss or damage occurs, the insured must "promptly notify" ICBC. Further, section 5(3)(b) of the policy says the owner must not remove any physical evidence of the loss or damage or make any repairs to the vehicle, unless immediately necessary to protect the vehicle from further loss, until ICBC has had a reasonable opportunity to inspect it.
14. ICBC says Mr. Robertson did not inform it of the loss until April 30, 2020, over 3 months after the loss occurred. Once notified, ICBC says it tried to inspect the vehicle's fuel and damaged injectors, but the injectors had been sent back to Ford. ICBC undisputedly performed tests on fuel that was saved by ECA, which I discuss in detail below.
15. First, although the claim was not officially opened with ICBC until April 30, Mr. Robertson says he tried to report the claim several times and was refused. Mr. Robertson provided his phone records that show he contacted ICBC at least twice (on February 14 and March 12) but says he was told by ICBC employees he did not have a claim. ICBC does not deny this, so I accept it. Mr. Robertson did not explain

why he waited over 2 weeks to initially report the claim to ICBC, but given ICBC refused to accept the claim, I find nothing turns on this. I find Mr. Robertson did not fail to promptly notify ICBC.

16. I also find Mr. Robertson did not fail to give ICBC a reasonable opportunity to inspect the vehicle. Mr. Robertson immediately took the truck to an ICBC accredited shop, who performed the repairs. Mr. Robertson says it was ECA that informed him to file a claim with ICBC, and he says he relied on ECA to preserve whatever was necessary for the claim, which I find was reasonable. ECA did in fact save fuel samples, but admittedly returned the injectors to Ford for recycling, which it says is standard practice. ICBC says it was deprived of the ability to inspect the injectors to confirm whether contaminated fuel caused the damage, or whether it was the injectors' age or general wear and tear.
17. I note that after Mr. Robertson was able to start an ICBC claim and he was told ICBC needed to inspect the injectors, he took steps to try to track them down, including contacting Ford. Mr. Robertson advises that due to the delay, Ford had already destroyed the injectors. I find Mr. Robertson acted reasonably in the circumstances. ECA kept the fuel sample and returned the injectors to the dealership as required by the manufacturer. Had there not been a delay by ICBC in allowing Mr. Robertson to start his claim, the injectors may have been located. I find it is unreasonable for ICBC to refuse to start a claim for 2.5 months and then expect the parts to be available when it finally decided to accept the claim. I find ICBC would have had a reasonable opportunity to inspect the parts as of February 12, 2020, when Mr. Robertson first tried to report the damage.
18. In summary, I find the applicants did not breach the insurance policy.

### ***Entitlement to insurance coverage***

19. That brings me to whether the applicants have proven the truck damage was a result of vandalism and, if so, the appropriate compensation for the repairs.
20. As mentioned above, when Mr. Robertson left his workplace on January 24, 2020, he immediately noticed his truck was running “rougher than normal”, and it started to smoke out the tailpipe. He pulled over to find a shop, then drove approximately 3.7 km to ECA for assessment and repair. When ECA performed the repairs, Mr. Coffey kept the contaminated fuel for later inspection.
21. On May 15, 2020, ICBC employee TF attended at ECA to take samples of the fuel. One of ICBC’s pictures in evidence from that day show the fuel sample came from a red jerry can. TF took the fuel sample to an undisclosed mechanic who determined the sample was 80% gasoline and 20% diesel. Neither evidence of the testing or any subsequent report were provided as evidence in this dispute, only TF’s notes of the testing results.
22. ICBC provided a statement from Jeff Hall, an independent automotive consultant and mechanical inspector with over 25 years’ experience. I accept Mr. Hall as an expert under the CRT’s rules, qualified to give an opinion about the cause of the injectors’ damage. Mr. Hall gave the opinion that, based on an 80/20 gas to diesel ratio, Mr. Robertson could not have possibly driven 3.7 km from where he had pulled over to ECA. Mr. Hall stated that with that high level of gasoline the engine would have seized within 500 metres. Mr. Hall said a contamination level of 5-15% would account for Mr. Robertson’s ability to drive the distance he did without the truck seizing. I infer Mr. Hall is saying the fuel that TF tested was not fuel from Mr. Robertson’s truck. So, Mr. Hall gave the opinion that it was not contaminated fuel that caused the injector damage, but poor maintenance of the truck, referring to a note of “dirty oil” on ECA’s invoice. Mr. Hall did not perform his own fuel analysis, but rather relied on information provided to him from ICBC about the fuel’s contamination level.

23. Although ICBC did not explicitly make this submission, I find it is essentially arguing that the fuel TF tested was not fuel from Mr. Robertson's vehicle, but rather was fuel contaminated at a later date to bolster Mr. Robertson's claim.
24. The problem with Mr. Hall's opinion, and ICBC's position, is that it is based on an unproven assumption about the contaminated fuel. I say this because in a June 17, 2020 statement, Mr. Coffey explained he had one yellow diesel container in his shop which held the contaminated fuel from Mr. Robertson's truck. ICBC did not specifically respond to this statement, but as noted, the picture TF took of the sample he tested from ECA was from a red container, not yellow. On balance, I find it likely the sample was taken from the wrong container. Therefore, I find the underlying assumption in Mr. Hall's report that the contaminated fuel was 80% gas is unproven. So, I find Mr. Hall's opinion is unhelpful in determining the cause of the damaged injectors. I also find ICBC's position that the fuel was too contaminated to have been in Mr. Robertson's truck is unproven, given I find it likely tested the wrong sample.
25. I find the best evidence of the damage's cause is from Mr. Coffey, who actually investigated and performed the repairs. In an October 9, 2020 email, Mr. Coffey explained that the injectors did not fail due to wear and tear. He stated when injectors fail due to wear and tear there would not be smoke coming from the tailpipe. Mr. Coffey said Mr. Robertson's truck was smoking so bad that it filled his shop's parking lot with smoke. He further explained that diesel is a lubricant, where gasoline is not, so gas in the fuel tank is "equivalent to fine sand eroding the pistons in the injectors". As the pistons move so fast, damage happens immediately, consistent with the truck seizing up while Mr. Coffey worked on it.
26. In a later February 1, 2022 affidavit, Mr. Coffey swore that it is his opinion the injector damage was caused by contaminated fuel, and that other than the fuel issue, the truck "was in good mechanical repair".
27. Mr. Coffey is a qualified mechanic with 30 years' experience in both gas and diesel vehicles. He runs ECA, which as noted is an ICBC designated inspection facility. Although ICBC argued Mr. Coffey and Mr. Robertson knew each other before this

claim, both Mr. Coffey and Mr. Robertson deny ever meeting before Mr. Robertson brought the truck to ECA on January 24, 2020. I accept Mr. Coffey's evidence as independent expert evidence under the CRT's rules, and I find his explanations helpful.

28. On balance, I find the injectors were damaged by contaminated fuel, not from wear and tear or poor maintenance.
29. Section 5.9(a)(ii) of Division 5 of ICBC's Autoplan Optional Policy says, in part, that ICBC does not have to cover mechanical failure of a motor vehicle unless it is coincidental with other covered loss or damage or is caused by malicious mischief.
30. So, was the contaminated fuel a result of malicious mischief? The applicants say the truck ran fine on Mr. Robertson's commute from North Vancouver to Abbotsford on the morning of January 24, 2020. Mr. Robertson says sometime during that day while his vehicle was parked at his workplace, someone put gasoline in the fuel tank, despite a warning sticker clearly labeling the fuel tank as "Diesel Only". It is undisputed the fuel tank was not a "locking" fuel tank. Mr. Robertson suggests the vandalism may have been the result of a verbal altercation he had the previous day with unknown persons who frequent his workplace's parking lot.
31. Considering the insurance policy, I find that if an unknown person put gasoline in the tank, it would be malicious mischief because it shows an intent to damage or destroy property (see: *Reliable Distributors Ltd. v. Royal Insurance Co. of Canada*, 1986 CanLII 959 (BCCA)). I also find that the injectors' failure is a "mechanical failure" as part of the applicants' truck. None of this is disputed.
32. So, have the applicants proven that an unknown person put the contaminant into the fuel tank?



33. *Pfleger v. ICBC and Gillespie*, 2005 BCPC 524 and *Stony Lake Logging Ltd. v. ICBC*, 2015 BCPC 385, are both cases where water was added to the plaintiffs' fuel tanks, which the plaintiffs in each case alleged was the result of malicious mischief. The court held that suspicion of vandalism does not meet the standard of proof. Although there was no objective proof of the vandalism, the court found that if other alternative explanations could be excluded, malicious mischief can be proven.
34. This means that although Mr. Robertson suspects the unknown persons contaminated his fuel, that suspicion alone is not enough. However, the applicants can prove malicious mischief without direct evidence, by disproving any alternative explanation. Here, I find the applicants have done so.
35. I find there are only 2 explanations for the contaminated fuel: either Mr. Robertson put gasoline in it himself or it was an unknown vandal. Mr. Robertson provided a bank statement showing he last filled the tank on January 16, 2020, nearly a week before the truck's breakdown. Mr. Robertson further said he is the only person who fills the truck's tank and only ever puts diesel into it. Further, ICBC has never suggested Mr. Robertson put gasoline into the fuel tank himself. Although ICBC argues Mr. Robertson never reported the incident to police, Mr. Robertson says he phoned the RCMP on February 5, 2020 to report it but no police file was created. Mr. Robertson provided his phone records showing the call to support this. I find there is no plausible reason why Mr. Robertson would sabotage his own truck. I find the applicants did not put gas into the fuel tank.
36. That only leaves the unknown vandal. Other than saying the failure was not due to contaminated fuel, which I have already dismissed as a possibility, ICBC did not provide any other alternative explanation for the contaminated fuel. On balance, I find the applicants have proven the contaminated fuel was the result of malicious mischief.
37. As for damages, apart from a vague assertion by ICBC that some of ECA's invoice was unrelated to damage from contaminated fuel, ICBC does not significantly dispute the repair cost. ICBC did not detail what charges it believes it should not be responsible for reimbursing. Also, an applicable deductible would generally be

deducted from any reimbursement. No party provided any information about the applicable deductible, so I do not make any deduction. I find Mr. Robertson has proven entitlement to the full \$5,000 claimed. However, as Rashidi is the truck's registered owner, I find it is the successful applicant, and ICBC must reimburse it the \$5,000. I dismiss Mr. Robertson's claims personally, as he is undisputedly not the registered owner nor was he listed as the truck's principal operator at the time.

### ***Interest, fees and expenses***

38. The CRT's \$5,000 monetary limit is exclusive of *Court Order Interest Act* interest, CRT fees, and dispute-related expenses.
39. Rashidi is entitled to pre-judgment interest on the \$5,000 under the *Court Order Interest Act*. Calculated from February 14, 2020, the first day Mr. Robertson tried to report the claim and a date I find reasonable in the circumstances, to today's date, this equals \$94.44.
40. 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. As Rashidi was successful, I order ICBC to reimburse it \$175 in paid CRT fees. The applicants did not claim any dispute-related expenses. As ICBC was unsuccessful, I dismiss its claim for reimbursement of CRT fees and dispute-related expenses.

### **ORDERS**

41. Within 30 days of the date of this decision, I order ICBC to pay Rashidi a total of \$5,269.44, broken down as follows:
  - a. \$5,000 in damages as reimbursement for repair costs,
  - b. \$94.44 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in tribunal fees.
42. Rashidi is entitled to post-judgment interest, as applicable.

43. Mr. Robertson's claims are dismissed.

44. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Andrea Ritchie, Vice Chair