



# Civil Resolution Tribunal

Date Issued: October 12, 2022

File: SC-2022-001449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yoon v. ICBC*, 2022 BCCRT 1118

BETWEEN:

SAMUEL YOON

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and CHUNG  
PHAM

**RESPONDENTS**

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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 happened on March 29, 2020 in Surrey, British Columbia. The applicant, Samuel Yoon, and the respondent, Chung Pham, were both in line in their cars in a Starbucks parking lot drive-thru when the collision occurred. Mr. Yoon says the respondent insurer,

Insurance Corporation of British Columbia (ICBC), improperly held Mr. Yoon solely responsible for the accident. Mr. Yoon claims \$1,200 because he says he paid ICBC so it would not affect his accident history.

2. Mr. Pham denies any responsibility for the accident. ICBC says it is improperly named as a party to this dispute.
3. Mr. Yoon represents himself. ICBC and Mr. Pham are both represented by an ICBC 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. 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.
8. In its Dispute Response, ICBC argued it is not a proper party to Mr. Yoon's claim, and that the claim should be against Mr. Pham only. I disagree. As discussed below, Mr. Yoon argues that ICBC incorrectly determined he was at fault for the accident which I find is a claim against ICBC as his insurer. I find ICBC is a properly named party.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations investigating the accident and assessing fault, and
  - b. Who is responsible for the accident? If not Mr. Yoon, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Yoon must prove his 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.

***Did ICBC breach its statutory obligations investigating the accident and assessing fault?***

11. As noted above, Mr. Yoon generally says that ICBC incorrectly assessed fault against him. He also says he used ICBC's Claims Assessment Review (CAR) process and was unsuccessful. Mr. Yoon argues the CAR process was not transparent.
12. To succeed against ICBC in this dispute, Mr. Yoon must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assigning sole responsibility for the accident against Mr. Yoon (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322).
13. ICBC owes Mr. Yoon a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55 and 93). 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. 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).
14. Apart from generally disagreeing with ICBC's fault assessment, Mr. Yoon does not make any specific allegations against ICBC. Although he says the CAR process was not transparent, Mr. Yoon did not provide any submissions about the process or provide any evidence (such as the CAR decision itself) in support of this assertion.
15. In the circumstances, I find Mr. Yoon has not shown on a balance of probabilities that ICBC acted unreasonably in investigating the accident or assigning fault to Mr. Yoon. I also find there is no evidence ICBC breached its statutory obligations or its contract of insurance. I dismiss Mr. Yoon's claims against ICBC.

### ***Who is responsible for the accident?***

16. On March 29, 2020, Mr. Yoon and Mr. Pham were both in separate lines in a parking lot, waiting for the Starbucks drive-thru. The two lines converge before the ordering station. Mr. Pham was in a line that went straight through the parking lot to the ordering station with no turns. Mr. Yoon was perpendicular to that, and had to turn right, into Mr. Pham's line, in order to reach the ordering station. None of this is disputed.
17. Mr. Yoon says ICBC considered him the "merging party" so it was his responsibility to yield to Mr. Pham's vehicle. Mr. Yoon provided a brief email from the Starbucks' district manager, LD, who advised there is no specific line for guests to line up in the drive-thru, and that vehicles may line up in whatever direction is safe. So, Mr. Yoon argues he was not merging, but rather the vehicles in each line had equal rights to the lane. Additionally, Mr. Yoon says his vehicle was stopped when the impact occurred, so he says Mr. Pham caused the accident.
18. First, despite Mr. Yoon's assertions, I find that his line of vehicles did need to merge into Mr. Pham's line of vehicles to reach the ordering station. Regardless of having no line "priority", the common sense fact is that, to place an order at the drive thru, Mr. Yoon had to turn right and merge into Mr. Pham's established lane of travel.
19. Additionally, although Mr. Yoon says his vehicle was completely stopped when the accident occurred, I cannot agree. Mr. Yoon provided dash camera footage from his vehicle, but notably all videos provided end before the actual collision occurs. So, on the evidence before me, I am unable to find that Mr. Yoon's vehicle was stopped at the time of impact.
20. I turn to the relevant legislation. Section 1(c) of the *Motor Vehicle Act* (MVA) defines a "highway" as including every private place or passageway to which the public, for the purpose of parking or servicing vehicles, has access or is invited. So, I find the parking lot was a highway for the purposes of this claim, which is not disputed.

21. Section 175 of the MVA says that when entering a through highway, a driver must yield the right of way to traffic that has entered the intersection on the through highway or is approaching so closely that it constitutes an immediate hazard.
22. Based on the evidence before me, I find Mr. Yoon did not yield the right of way to Mr. Pham's vehicle that was already positioned and moving in the through lane. I find Mr. Yoon unsuccessfully tried to merge into the straight through lane when it was unsafe to do so. I also find that even if Mr. Yoon had stopped, he entered Mr. Pham's lane of travel without enough time for Mr. Pham to stop to avoid the collision. I find Mr. Yoon 100% responsible for the March 29, 2020 accident.
23. Given my finding on liability, it follows that Mr. Yoon's claim for damages is dismissed. However, I note that despite claiming \$1,200, he provided no evidence that he paid this amount, or any amount, related to the accident. So, I would have dismissed Mr. Yoon's claim for damages as unproven in any event.
24. 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 Mr. Yoon was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

## **ORDER**

25. Mr. Yoon's claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair