



# Civil Resolution Tribunal

Date Issued: May 30, 2023

File: SC-2022-006396

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kovacs v. ICBC*, 2023 BCCRT 449

BETWEEN:

MICHELLE KOVACS

**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 water damaged vehicle. The applicant, Michelle Kovacs, says her vehicle was damaged during the flooding caused by an atmospheric river in British Columbia in November 2021. She says the respondent insurer, Insurance Corporation of British Columbia (ICBC), improperly held her at fault for her

vehicle's water damage. Ms. Kovacs asks for the collision to be "removed from her insurance" and for reimbursement of her \$500 deductible.

2. ICBC says it properly classified the incident as a "collision" under Ms. Kovacs' insurance policy. It denies Ms. Kovacs is entitled to any deductible reimbursement.
3. Ms. Kovacs represents herself. ICBC is represented by an authorized 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. 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.
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.

## **ISSUE**

8. The issue in this dispute is whether Ms. Kovacs is entitled to a refund of her \$500 “collision coverage” deductible.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Ms. Kovacs must prove her 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.
10. Ms. Kovacs says on November 16, 2021 she was driving northbound on 208 Street near 96 Avenue in Langley, British Columbia when she noticed the road in front of her was flooded. Ms. Kovacs says she stopped her vehicle, but kept it running, before driving into the water on the road. She says several large commercial trucks passed her going both directions, which caused large waves of water to hit her vehicle, eventually flooding her engine and interior. She says her engine cut out and when she tried to restart it, it would not run. A passerby called a tow truck and her vehicle was towed home. It is undisputed the vehicle damage was caused by water in the engine. Eventually ICBC determined the vehicle was not worth repairing and was written off, and Ms. Kovacs paid a \$500 deductible.
11. Ms. Kovacs says ICBC improperly classified the incident as a “collision” claim when it should actually be a claim under her “comprehensive” insurance. So, she asks for an order that ICBC “remove the collision” from her insurance and reimburse her \$500 for her paid insurance deductible.
12. First, the evidence shows that Ms. Kovacs’ insurance policy carried a \$500 deductible for collision coverage and a \$300 deductible for comprehensive coverage. I find Ms. Kovacs would have to have paid at least a \$300 deductible for coverage under her policy. I find her claim is limited to the \$200 difference in the two deductibles.

13. Next, ordering someone to do something, or to stop doing something, is known as “injunctive relief”. This includes an order for ICBC to remove a claim from a person’s insurance history. Also, to the extent Ms. Kovacs is seeking an order declaring she is not responsible for the November 16, 2021 incident, this is known as “declaratory relief”. Both injunctive and declaratory relief are outside the CRT’s small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant provisions that would permit me to grant the injunctive or declaratory relief Ms. Kovacs seeks.
14. So, the issue before me is whether the November 16, 2021 water damage is properly a “collision” or “comprehensive” claim under Ms. Kovacs’ insurance policy.
15. ICBC Autoplan Optional Policy, Division 2, section 2.3 sets out the definitions of collision coverage and comprehensive coverage:

**“collision coverage”** means coverage for loss or damage caused by upset of a vehicle or collision of a vehicle with another object, including, but not limited to... the roadway being travelled on or an object on, in, under, over or adjacent to the roadway, including... any body of water...

**“comprehensive coverage”** means coverage for loss or damage other than loss or damage to which collision coverage applies and includes coverage for loss or damage caused by... rising water...
16. Ms. Kovacs argues the incident should fall under her “comprehensive coverage” because the damage was due to rising water while her vehicle was stopped. ICBC argues Ms. Kovacs drove into a body of water, colliding with an object (the water), causing damage to her engine and car’s interior.
17. The problem for Ms. Kovacs is that her explanation of the incident, and in particular whether she drove into the water, is inconsistent. In her initial report to ICBC on November 17, 2021, Ms. Kovacs stated there was some flooding on the road, but it “did not look deep” as other vehicles and a cyclist went through ahead of her. She stated “when I went to drive through my car seized up and died”, and that her car

“started to flood on the inside” so she gathered her belongings and waited for a tow truck.

18. As a result of Ms. Kovacs’ initial report, ICBC undisputedly told Ms. Kovacs her claim was a collision claim and was subject to her \$500 collision deductible.
19. After ICBC’s decision, Ms. Kovacs provided further statements to ICBC. In a January 10, 2022 statement to ICBC, Ms. Kovacs stated that she “never drove into anything”. She stated she crossed the railroad tracks and saw the road ahead was flooded, that she tried to drive but all the water from “other vehicles” poured into her car. She twice denied driving into a flooded road, and says she stopped her vehicle as soon as she saw the water.
20. In another statement to ICBC on February 16, 2023, Ms. Kovacs again says that a vehicle and a cyclist in front of her stopped and she stopped behind them. She said that vehicle and cyclist continued through the water, but she could tell it was deeper than it looked. She said vehicles around her started to pass her in both directions, causing waves of water to flood into her car. She said she tried to turn her vehicle around but the engine had seized while she was on the side of the road. She says only the nose of her vehicle was in the water.
21. In her submissions for this dispute, Ms. Kovacs says once she came over the railroad tracks on 208 Avenue she could clearly see flooding on the road ahead. She says she pulled to the side of the road so other vehicles could pass her as she decided what to do. She says several large commercial trucks that passed her caused waves of water into her car, causing her engine to cut out and would not restart.
22. ICBC provided a photograph from the tow truck driver that ICBC says was taken before the driver loaded and towed Ms. Kovacs’ vehicle away from the incident scene. This photo shows Ms. Kovacs’ vehicle in the middle of a flooded road, well past the railroad tracks. The image shows water halfway up the car’s front grille. Ms. Kovacs argues this photo was taken after her car had been chained up and pulled through the water. However, I find it unlikely the tow truck driver hooked up her vehicle, towed

it into the middle of a flooded road, unhooked it and removed all the attachments, took the photo, and then re-hooked up the vehicle and towed it away. I do not accept Ms. Kovacs' argument.

23. I find that Ms. Kovacs drove into the flooded road, her engine seized while doing so, and she was stuck. I also find this is consistent with Ms. Kovacs' initial statement to ICBC about the incident and with the statement of her witnesses, TK and DR. TK is a family member and was a passenger in Ms. Kovacs' car. In her undated statement TK says after the train tracks they noticed the road was completely flooded and vehicles passed them through the flooded road causing more water to enter their vehicle. I find this is consistent with Ms. Kovacs having driven into the water before other cars started passing her.
24. Ms. Kovacs provided a March 15, 2023 statement from DR that says Ms. Kovacs was stopped on the side of the road right before the flooded area, and that trucks driving around her caused water to flood her car.
25. However, in an earlier statement to ICBC on February 23, 2023, DR stated they saw Ms. Kovacs on the side of the road, before the water. Later in the same statement, DR said Ms. Kovacs' vehicle was not on the side of the road, "she was on the road", and that they had to go around her, but she was not in the water. DR said everyone was going down the middle of the road, the water was really deep, and they had to wait to go around her. They again stated "she was in her lane, on the road, not off to the side of the road".
26. I find DR's statements to be of little assistance. I find they are inconsistent in their description of Ms. Kovacs' vehicle location, which is a critical piece of information. So, I place little weight on their statements.
27. Additionally, ICBC provided a report from David Little, Professional Engineer with CEP Forensic. In the report, Mr. Little explains he has done investigations of motor vehicle accidents for over 35 years, including in the areas of vehicle collision

reconstruction and analysis. I accept Mr. Little as an expert in assessing vehicle damage under the CRT's rules.

28. In his report, Mr. Little describes that Ms. Kovacs' vehicle (a 2006 Acura TL) has its intake for the air filter lower in the engine compartment, at approximately bumper height. So, Mr. Little says that for water to have entered the engine, it must have reached a height approximately equivalent to the vehicle's bumper. Mr. Little further explains that passenger vehicles are designed to be driven in the rain and through small puddles, but are not designed to be driven during partial submersion.
29. Mr. Little describes that if Ms. Kovacs had stopped her vehicle before entering the flooded road, the water splashing from oncoming or passing vehicles "would not have resulted in a significant or sustained rise in the water level within the engine compartment". However, Mr. Little explains that if the vehicle was driven through a deep and prolonged area of flooding then water would have ample opportunity to enter the air intake and engine. He says as the vehicle travels through water, the water is displaced forward and rises in front of the vehicle, increasing the potential for water to enter the air intake.
30. Mr. Little provides calculations that, based on the tow truck photo, Ms. Kovacs' vehicle had driven 80 meters through the flooded road. It is his opinion that Ms. Kovacs' vehicle sustained engine damage as a result of being driven through the flooded road, and that the engine would not have been damaged if she had pulled over to the side of the road before entering the flooded area.
31. I accept Mr. Little's explanations and I find they are consistent with my view of the evidence and submissions. On the information before me, I find it more likely than not that Ms. Kovacs attempted to drive through the flooded road, which caused her engine to seize and stop running.
32. So, given ICBC's Autoplan Optional Policy terms, Ms. Kovacs' vehicle damage resulted from her vehicle colliding with a body of water on the roadway. I find the

claim was properly classified under Ms. Kovacs' "collision coverage" and she is subject to the \$500 deductible. As a result, I dismiss her claims.

33. Next, in her Dispute Notice and submissions, Ms. Kovacs to some extent argues ICBC acted improperly or unreasonably in its investigation of her claim. Specifically, she says that ICBC "completely disregarded" her witnesses, and that she was "lied to and bullied" about not using her comprehensive coverage. Ms. Kovacs did not claim a specific remedy for these allegations. However, even if she had, I would have dismissed this aspect of her claim in any event. My reasons follow.
34. ICBC owes Ms. Kovacs a duty of utmost good faith, which requires ICBC to act fairly, both in how it investigates the assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraph 22, 55 and 93).
35. Here, I find the correspondence in evidence does not indicate ICBC lied to, or bullied, Ms. Kovacs. I find the correspondence from ICBC was professional and courteous, while explaining its position on applying Ms. Kovacs' insurance coverage. While I acknowledge Ms. Kovacs did not agree with ICBC's position, I find there is simply no evidence ICBC bullied or lied to Ms. Kovacs.
36. As for the witnesses, the evidence is that ICBC spoke with DR personally and took a detailed statement from them. There is nothing in the evidence that indicates TK's statement was offered to ICBC before this proceeding was started. I find Ms. Kovacs has not proven ICBC failed to consider any evidence.
37. 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. However, neither party paid tribunal fees nor claimed dispute-related expenses.



**ORDER**

38. Ms. Kovacs' claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair