



# Civil Resolution Tribunal

Date Issued: August 23, 2024

File: SC-2023-002955

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Symmonds v. Apple Canada Inc.*, 2024 BCCRT 820

BETWEEN:

JANET SYMMONDS

**APPLICANT**

AND:

APPLE CANADA INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

### INTRODUCTION

1. This dispute is about iPhones. The applicant, Janet Symmonds, says the respondent, Apple Canada Inc. (Apple), had to replace her iPhone 7 and iPhone 11 numerous times due to hardware problems. She claims \$5,000 as compensation for psychological injury.

2. Apple denies liability. It says Miss. Symmonds' claim lacks any compensable cause of action, is partly barred as out of time under the *Limitation Act* and is for an excessive amount in any event.
3. Miss Symmonds represents herself. A lawyer, Andrew Butler, represents Apple.
4. For the reasons that follow, I dismiss Miss Symmonds claims.

## **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.
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 court.
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.

### ***Miss Symmonds' Dispute-Related Expenses Claims for an iPhone 11 and Other Costs***

9. Miss Symmonds claims the following as dispute-related expenses: 1) \$1,069.60 for an iPhone 11, 2) unspecified amounts for “revised related expenses” in connection with health, stress, privacy issues, “repair chain” issues, and inconvenience, and 3) \$534.99 for a full or partial refund for monthly AppleCare fees. Miss Symmonds did not include these specific claims in the Dispute Notice. She outlined them in an April 4, 2024 email to the CRT.
10. Apple objects to these claims and says they are not disputed-related expenses under CRT rule 9.5. It also says these claims push her total claims about the CRT’s small claims limit of \$5,000. Miss Symmonds did not reply to Apple’s submission.
11. I agree with Apple that these are substantive claims and not dispute-related expenses. I say this because they have no connection with the CRT dispute process itself. I find it would be procedurally unfair to Apple to consider these claims as they were not in the Dispute Notice. Further, I lack the jurisdiction to consider them in any event, as they would push Miss Symmonds’ claims above the CRT’s small claims limit of \$5,000. Given this, I find Miss Symmonds did not bring these claims properly before me. I make no findings about them.

### ***Miss Symmonds' Late Evidence***

12. Miss Symmonds provided the following as late evidence: videos, an expert report, contract documents, and further submissions. Apple did not object to the late evidence and had an opportunity to provide submissions about the evidence. I find the late evidence is relevant, so I allow it.

### **ISSUE**

13. The issue in this dispute is whether Apple must compensate Miss Symmonds up to \$5,000 for time and stress in connection with replacing her iPhone 7 and iPhone 11.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, Miss Symmonds as the applicant must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. On September 11, 2014, Miss Symmonds purchased an iPhone 7 through her mobile phone carrier. At some point it developed hardware problems outside the warranty period of 90 days. She purchased an iPhone 11 on October 19, 2020 from her carrier to replace it. These transactions are shown in 2 separate documents from her phone carrier.
16. It is undisputed that Miss Symmonds also purchased an extended warranty for the iPhone 11 known as AppleCare. The AppleCare terms are not in evidence. However, the parties' submissions indicate that Apple agreed to provide troubleshooting and replacement phones for any hardware issues. In return, Miss Symmonds paid a monthly fee. Miss Symmonds does not allege a breach of any specific AppleCare terms and neither party relied on its terms. So, I find the exact provisions are not relevant to this dispute.
17. Apple provided a witness statement from ML, an Apple employee. ML says the following. According to Apple's records, Miss Symmonds came to the Apple store ML worked at on November 20, 2021, May 27, 2022, August 17, 2022, and May 31, 2023. On each of those dates Miss Symmonds reported issues with her iPhone 11. Apple attempted troubleshooting and replaced her iPhone with a new one. So, in total, Apple replaced her iPhone 11 with a new one four times.
18. Miss Symmonds says that there were actually 6 replacements instead of 4. However, I find this unproven by any evidence. I note that Miss Symmonds provided undated recordings of phone conversations with Apple employees. The recordings are consistent with ML's version of events.

***Must Apple compensate Miss Symmonds up to \$5,000 for time and stress in connection with replacing her iPhone 7 and iPhone 11?***

19. Miss Symmonds says that Apple employees, including ML, treated her rudely at times. She also says that the multiple issues with her phones affected her mental and physical health.
20. Apple says the following. Miss Symmonds' claim lacks any legal basis. She also claims for psychological upset that is not recoverable at law. Apple also says Miss Symmonds' expert evidence is deficient. I discuss this below. Apple also says it provided a high level of customer service and denies breaching any applicable standard of care in connection with this. It also denies that Miss Symmonds' current iPhone 11 malfunctioned or any other iPhone malfunctioned previously. Finally, Apple also says some or all of Miss Symmonds' claim is out of time.
21. I will first consider whether Miss Symmonds' claims are out of time. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered". Under section 8, a claim is discovered when the applicant knew or reasonably ought to have known that a) an injury, loss, or damage had occurred, b) that the injury, loss or damage was caused by or contributed to by an act or omission, c) that the act or omission was that of the person against who the claim is or may be made, and d) that a court or tribunal proceeding was an appropriate means to seek a remedy. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the CRT.
22. Miss Symmonds applied for dispute resolution on March 22, 2023. So, I find her claim includes events occurring from March 22, 2021 onwards. Miss Symmonds first replaced her iPhone 11 on November 20, 2021, so I find at least part of her claim is within the basic limitation period of 2 years. That said, as I have dismissed her claims for other reasons, I find I need not discuss this issue in further detail.

23. Miss Symmonds did not allege any specific breach of a contract term. So, I find her claim is about alleged rude and unpleasant treatment by Apple staff and the general inconvenience caused by replacing her iPhone multiple times. I find that Miss Symmonds claims for mental distress. For such claims, there must be some evidence to provide a basis for awarding damages for mental distress. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253, paragraphs 47 to 50 and the non-binding decision of *Eggbury v. Horn et al*, 2018 BCCRT 224.
24. The law distinguishes between psychological disturbance that rises to the level of personal injury and psychological upset that does not amount to injury and therefore is not compensable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9, and *Lau*, cited above. In order to be compensable, Miss Symmonds must show her mental disturbance is serious, prolonged, and rises above the ordinary annoyances, anxieties, and fears that come with living in civil society. See *Saadati v. Moorhead*, 2017 SCC 28.
25. Miss Symmonds provided notes from her physician, Dr. Andrew Chiu, dated February 15, April 12, May 9, and September 7, 2023. Dr. Chiu wrote in the notes that Miss Symmonds visited Dr. Chiu, and she experienced stress, frustration, and “other impacts on her health” due to issues with her iPhone.
26. In an April 18, 2024 expert report, Dr. Chiu said that Miss Symmonds struggled with issues in connection with her iPhone malfunctioning. Dr. Chiu said this caused her a great deal of stress that impacted her mood, sleep, and concentration. Dr. Chiu said they based their opinion on Miss Symmonds’ reported history.
27. Having reviewed the evidence, I find it does not show that Miss Symmonds’ psychological disturbance rises to the level of personal injury. In particular, I find it unproven that the disturbance was sufficiently serious. Dr. Chiu did not provide any diagnosis in the evidence or say that the disturbance aggravated an underlying condition. There is also no indication that Dr. Chiu recommended that Miss Symmonds miss work or seek therapy, or that Miss Symmonds did so. Dr. Chiu said that Miss Symmonds experienced stress that affected her mood, sleep, and

concentration. However, Dr. Chiu did not quantify this or show what loss Miss Symmonds experienced from these symptoms.

28. I acknowledge that the evidence shows Miss Symmonds reported issues for a prolonged period of time. However, I do not find this, by itself, is enough to show a compensable psychological injury.
29. Given the above, I find it unnecessary to discuss whether Apple employees such as ML treated Miss Symmonds in a rude or unpleasant manner. I dismiss Miss Symmonds' claim for \$5,000 for psychological injury.
30. 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. I dismiss Miss Symmonds' claim for reimbursement of CRT fees. Apple did not claim any specific dispute-related expenses.

## **ORDER**

31. I dismiss Miss Symmonds' claim and this dispute.

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David Jiang, Tribunal Member