



Civil Resolution Tribunal

Date Issued: February 25, 2025

File: SC-2023-008986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Choe v. ICBC*, 2025 BCCRT 256

BETWEEN:

EUN HEE CHOE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. Eun Hee Choe was involved in a motor vehicle accident with a third party RCMP officer, DM, on January 6, 2023 in Surrey, BC. The Insurance Corporation of British Columbia (ICBC) insures Ms. Choe. DM is not a party to this proceeding.

2. ICBC held Ms. Choe 75% responsible for the accident. Ms. Choe disagrees with ICBC's assessment, and says she should be held 0% responsible. Ms. Choe asks that ICBC refund her \$225 insurance deductible, and \$400 she says she paid for a copy of CCTV footage of the accident. ICBC says it correctly determined liability.
3. Ms. Choe is self-represented. An employee represents ICBC.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says 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. These are the CRT's formal written reasons.
5. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves questions of credibility, and in particular, whether the emergency vehicle's lights were on at the time of the accident. While in some cases, credibility issues can be resolved by an oral hearing, the advantages of an oral hearing must be balanced against the CRT's mandate. Here, I find I am properly able to assess and weigh the documentary evidence, including CCTV evidence, and submissions before me without an oral hearing. So, I decided to hear this dispute through written submissions alone.
6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses, and inform itself in any other way it considers appropriate.
7. Under CRTA section 61, the CRT may make any order or give any direction in relation to a proceeding it thinks necessary to achieve the CRT's objects in accordance with its mandate. In the Dispute Notice issued at the start of this

proceeding, the applicant's name is recorded as Eun Hee Choe Choe. CRT staff emailed Ms. Choe to confirm whether this was correct, or whether there was just one "Choe", but Ms. Choe did not respond within the requested timeframe. In previous correspondence with the CRT, Ms. Choe has repeatedly signed off using "Eun Hee Choe", and the evidence, including correspondence from ICBC, indicates her name is Eun Hee Choe. So, I have exercised my discretion under CRTA section 61 to amend the style of cause above to use the applicant's proper legal name.

8. 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.

ISSUES

9. The issue in this dispute is whether ICBC properly assessed responsibility for the accident and if not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Choe must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but only refer to information I find necessary to explain my decision.
11. At the outset, I address ICBC's assertion that this dispute is solely about accident responsibility. ICBC says ordering someone to do something or stop doing something (injunctive relief), such as changing a liability decision, is outside the CRT's small claims jurisdiction. I agree that with certain limited exceptions that do not apply here, the CRT cannot order injunctive relief under its small claims jurisdiction. However, for the reasons below, I find Ms. Choe's claim does not require that I make an order for injunctive relief.
12. Section 174 of the *Insurance (Vehicle) Act* (IVA) requires ICBC to indemnify an insured for their vehicle's damage or loss, subject to a reduction for the insured's

degree of responsibility for the accident. That section forms part of ICBC's compulsory insurance contract under section 1.1 of the *Insurance (Vehicle) Regulation*. It necessarily follows that ICBC has a contractual obligation to correctly assess responsibility, because if it does not, it has failed to properly indemnify its insured. So, I find Ms. Choe is claiming ICBC breached the parties' contract by incorrectly assessing responsibility for the accident. If I decide ICBC did not properly assess responsibility, then I may award damages for breach of contract.

The accident and ICBC's investigation

13. On January 6, 2023 around 9:00pm, Ms. Choe and her passenger, SK, were travelling east on 108th Avenue in Surrey. Ms. Choe had a green light as she approached and went through the intersection at 140th Street. At the same time, an unmarked police SUV travelling south on 140th Street to attend to a police call also went through the intersection. The two vehicles collided. None of this is disputed.
14. Ms. Choe says the SUV did not have its emergency lights or siren on as it drove through the intersection. She says the emergency lights were on briefly before it entered the intersection, then were off, and then were back on again continuously after the accident. Ms. Choe says at no time was the siren on. This is slightly different to her statement to ICBC on January 16, 2023, where she said she did not see any emergency lights until after the accident, and did not hear a siren at all.
15. ICBC says it did not open a "report" on DM since the RCMP is self-insured. However, ICBC contacted the supervising constable, JC, whose details were provided on January 12, 2023, for an accident report. JC said the SUV cleared the intersection at 108th Avenue and 140th Street "with their emergency equipment activated", and that while east-west traffic on 108th Street stopped, Ms. Choe's vehicle continued to make a right-hand turn south onto 140th Street. JC said as Ms. Choe finished making her turn, the accident happened. Ms. Choe denies making a right-hand turn, and as noted above, says there was no siren.

16. Based on Ms. Choe's and JC's statements, ICBC sent Ms. Choe a notification of responsibility letter dated January 16, 2023, advising her that she was 100% responsible for the accident.
17. Ms. Choe then provided ICBC with CCTV footage of the accident on February 1, 2023, as well as two witness statements. On review of the footage, ICBC contacted several other witnesses to the accident to conduct a secondary review. ICBC submitted statements, some redacted, from these witnesses.
18. DM, MT (DM's passenger and an RCMP officer), NH (a civilian RCMP officer driving behind Ms. Choe), and CT (a civilian), all reported that the police SUV's emergency lights were on before the SUV entered the intersection. None of DM, MT, or NH mentioned the SUV's siren being on. CT specifically said the SUV did not have its siren on, which is also what she wrote in a statement she prepared for Ms. Choe. SK said, "a big blue car hit our car so badly that it turn(ed) our car to the right side of the road", and that after a "few seconds" someone turned on the SUV's sirens and lights.
19. In addition to CT's statement, Ms. Choe submitted a statement from a witness, W, who was at the grocery store on the southeast corner of 108th Avenue and 140th Street at the time of the accident. W said they did not see what happened, and were not 100% certain, but thought they heard a siren after the accident. W did not recall hearing a siren beforehand.
20. Based on its secondary review, ICBC changed its liability decision and assessed Ms. Choe as 75% responsible for the accident. In its June 9, 2023 letter, ICBC relied on section 177 of the *Motor Vehicle Act* (MVA), which says:

On the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light, except when otherwise directed by a peace officer, a driver must yield the right of way, and immediately drive to a position parallel to and as close as possible to the

nearest edge or curb of the roadway, clear of an intersection, and stop and remain in that position until the emergency vehicle has passed.

21. ICBC said that though the police SUV did not have its siren on at the time of the accident, its lights were activated and “visible to be seen”. In coming to this decision, ICBC pointed to the witness statements described above, and the CCTV footage.

Did ICBC properly assess responsibility for the accident?

22. Ms. Choe says since the police SUV’s siren was undisputedly not on immediately before the accident and when it occurred, ICBC should have held her 0% responsible for the accident.

23. MVA section 122 sets out exemptions from the rules of the road for emergency vehicles. That section allows an emergency vehicle to go through a red light or stop sign without stopping (among other things). The emergency vehicle must drive with due regard for safety, and must exercise the privileges under section 122 in accordance with the *Emergency Vehicle Driving Regulation* (the EVDR).¹

24. In *Frers v. De Moulin*, the court found that MVA section 177 gives an emergency vehicle driver the right of way whether or not they have met the section 122 requirements.² However, the court said, “having the right of way does not give emergency vehicles free rein”. They must still drive within the EVDR’s limits, and with due regard for safety.

25. EVDR section 4(1)(a) says a peace officer operating an emergency vehicle for purposes other than pursuit may exercise the privileges under section 122 if they have reasonable grounds to believe “the risk of harm to members of the public from the exercise of those privileges is less than the risk of harm to members of the public should those privileges not be exercised”. Section 4(1)(b)(i) says if the

¹ See also *Gorman v Meghji*, 2018 BCSC 1904 (CanLII) at paragraph 129, and *Watkins v. Dormuth*, 2014 BCSC 543 (CanLII) at paragraph 95.

² See *Frers v. De Moulin*, 2002 BCSC 408 (CanLII) at paragraph 89.

emergency vehicle is driving through a red light or stop sign without stopping, it must have both its lights and siren on.

26. Here, I find DM made a reasonable risk assessment in deciding to go through the red light at the intersection of 108th Avenue and 140th Street to attend to the police call. Based on the evidence before me, I find they had their lights on before entering the intersection, but not their siren. I accept DM paused to allow a vehicle that did not stop to clear the intersection, but I find by not having their siren on, they did not drive with due regard for safety.
27. However, that is not the end of the matter. Under MVA section 144(1)(a), a person must drive with due care and attention. I find it likely that if Ms. Choe had properly scanned the intersection on approach, she would have seen the SUV's emergency lights, particularly as it was dark. Based on the CCTV footage, I also find Ms. Choe likely would have had time to perceive and react to the situation, and to yield to the SUV. So, I find Ms. Choe breached MVA section 144(1)(a).
28. In the circumstances, I find both parties were equally responsible for the accident. So, I find ICBC did not properly assess responsibility for the accident, and breached its contract with Ms. Choe.
29. Ms. Choe also says ICBC did not release the names or statements of any of the officers involved in or present at the accident scene to her until she began this CRT dispute, except for JC's. She says this suggests other officers' statements may have been "manipulated or omitted".
30. ICBC owes Ms. Choe a duty of good faith, which requires it to act fairly in investigating and assessing Ms. Choe's claim and deciding whether to pay it.³
31. ICBC says the information Ms. Choe says was provided to her was confidential and not permitted to be shared "under privacy laws" unless litigation or proceedings like

³ See *Bhasin v. Hrynew*, 2014 SCC 71, at paragraphs 22, 55, and 93.

this CRT dispute were initiated. It also says it provided Ms. Choe with summarized information, which Ms. Choe does not dispute.

32. I find Ms. Choe's assertion speculative. There is nothing to suggest the officers' statements were "manipulated or omitted". Importantly, I find they aligned with the independent witness CT's statement, and did not support JC's statement that the SUV's siren was activated. In these circumstances, I am satisfied ICBC met its duty of good faith.

Damages

33. Since I have found Ms. Choe was only 50% responsible for the accident, I find she was only responsible for paying half of her \$300 deductible, or \$150. She paid \$225 for her deductible. So, I find Ms. Choe is entitled to \$75 in damages.
34. ICBC confirmed that on October 11, 2024, it processed a reimbursement cheque to Ms. Choe for \$400.68, the amount she paid the City of Surrey for the CCTV footage. For this reason, I dismiss Ms. Choe's claim for \$400 for the CCTV footage.

INTEREST, CRT FEES AND DISPUTE-RELATED EXPENSES

35. The *Court Order Interest Act* applies to the CRT. However, in her Dispute Notice, Ms. Choe indicated she did not want to claim interest, and she understood she could not claim it later. So, I do not award any interest on the \$75 damages award.
36. 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. Ms. Choe successfully challenged ICBC's assessment of responsibility by proving it breached its contract with her, which was the main issue in this dispute. So, I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

37. Within 14 days of the date of this decision, I order ICBC to pay Ms. Choe a total of \$200, broken down as:
- a. \$75 in damages, and
 - b. \$125 in CRT fees.
38. Ms. Choe is entitled to post-judgment interest, as applicable.
39. I dismiss the balance of Ms. Choe's claims.
40. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member