



Civil Resolution Tribunal

Date Issued: October 17, 2025

File: SC-2024-003738

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. The Corporation of the City of Victoria*, 2025 BCCRT 1408

B E T W E E N :

TRENT SMITH

APPLICANT

A N D :

THE CORPORATION OF THE CITY OF VICTORIA and
CORPORATION OF THE TOWNSHIP OF ESQUIMALT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about compensation for damage to personal property.
2. The applicant, Trent Smith, called the Victoria Police Department (Victoria PD) after his roommate, LB, physically confronted him. In the course of performing a wellness check, Victoria PD sprayed CS gas, a tear gas, into Mr. Smith's apartment. Mr.

Smith says the CS gas ruined many of his personal belongings and spoiled his food. He claims \$5,000 in negligence damages.

3. The respondents, The Corporation of the City of Victoria and Corporation of the Township of Esquimalt, jointly provide police services to the residents of Victoria and Esquimalt through Victoria PD. The respondents deny Mr. Smith's claims for 3 reasons. First, they say Mr. Smith is barred from bringing his claim, because he failed to comply with the notice provisions in the *Local Government Act* (LGA). Second, the respondents say Victoria PD's actions are immune from negligence liability because they were core policy decisions. Third, they say even if Mr. Smith's claim is actionable, Victoria PD was not negligent. The respondents ask me to dismiss Mr. Smith's claim.
4. Mr. Smith is represented by a lawyer, Ben Isitt. The respondents are represented by their insurer's in-house legal counsel, Janet Kwong.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
6. 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. Here, I find 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 an oral hearing is not necessary in the interests of justice.

7. 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.
8. The respondents object to the admission of evidence Mr. Smith submitted late. They say there is no reason Mr. Smith could not have provided this evidence earlier, given it is a demand letter dated March 13, 2024. The respondents say they have been prejudiced in making their submissions, and denied the opportunity to address the late evidence's substance.
9. I find the respondents have not been prejudiced by this late evidence. The respondents were given the opportunity to comment on Mr. Smith's late evidence, and chose instead to register an objection. Also, the letter was addressed to the Victoria and Esquimalt Police Board (the Police Board). Given the Police Board's role, which is to provide civilian oversight to Victoria PD's activities, and the fact that it was copied to the City of Victoria, I find it likely the respondents had seen and considered the letter before Mr. Smith submitted it in this dispute. Finally, the letter raises no new issues. Mr. Smith submitted it to show when he provided written notice of the damage he sustained, given the applicable statutory timeframes. I find in doing so, he was properly replying to the respondents' defence raised only in their written submissions. For these reasons, I allow Mr. Smith's late evidence, and I have considered it in coming to my decision below.

ISSUES

10. The issues in this dispute are:
 - a. Is Mr. Smith's claim statute-barred by the LGA?
 - b. If not, are Victoria PD's actions core policy decisions, and immune from a negligence claim?
 - c. If not, were the respondents, through the Victoria PD's actions, negligent?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Smith must prove his 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.

Background

12. On December 30, 2023 around 11:50am, Mr. Smith called Victoria PD to report LB had physically confronted him, threatened to kill him, and appeared to be in mental health distress. Members of Victoria PD, including the Greater Victoria Emergency Response Team (GVERT) and mental health professionals, attended Mr. Smith's apartment over the next several hours, as LB had barricaded themselves inside and refused to come out. Around 9:37pm, GVERT members deployed CS gas into the apartment, and LB emerged. Mr. Smith says the use of CS gas was negligent, causing him to lose some of his personal belongings and food.
13. As described above, the respondents raise several defences to Mr. Smith's claims.

Local Government Act – notice provisions

14. First, the respondents say Mr. Smith's claim must fail because he did not comply with the LGA's statutory notice provisions.
15. LGA section 735 sets out a limitation period for some actions against municipalities or regional districts. Specifically, it says a person can only start an action against a municipality or regional district for unlawfully doing 1) anything purported to have been done under powers conferred by legislation, or 2) anything it might lawfully have done if acting in the manner established by law, within 6 months of the cause of action. Section 736(1) says a municipality or regional district is not liable for damages unless it receives written notice of the time, place, and manner the person sustained the damage, within 2 months of the date they sustained the damage. Section 736(3) says if a person does not provide the required notice, they are not

barred from starting an action, if the court believes there was a reasonable excuse, and the municipality or regional district has not been prejudiced by the failure.

16. The respondents say Mr. Smith provided no notice of damage until they were served with his Dispute Notice on July 17, 2024, which is well-beyond the 2-month timeframe established by section 736(1). They also say there was no reasonable excuse for any delay.
17. Mr. Smith says he provided written notice to the Police Board by letter dated March 13, 2024, which is approximately 2.5 months after the incident. For the reasons explained above, I find the letter to the Police Board, copied to the City of Victoria, effectively provided notice to both respondents. The respondents do not dispute this particular point, other than about timing. Mr. Smith says he was not able to provide written notice earlier because he was evicted from his apartment due to the damage the CS gas caused. He also argues the respondents were not prejudiced by the slight delay to the notice, as they had plenty of time after that to formulate their defences.
18. LGA section 736(3) refers to “the court”. The CRT is not a court. However, I find “the court” in this context must include the CRT as the decision-making body with the authority to decide claims up to \$5,000 under its small claims jurisdiction. Further, I find Mr. Smith provided a reasonable excuse for not providing notice of damage he sustained within 2 months. Police reports in evidence show the CS gas interfered with Mr. Smith’s access to his apartment, and required remediation. I have no trouble concluding that dealing with the gas’ impact could reasonably have delayed Mr. Smith’s ability to meet the notice deadline, whether or not he was evicted. The respondents have not argued that the delayed notice prejudiced their defence, and I find no basis for deciding it did. In these circumstances, I find Mr. Smith is not prevented from maintaining this dispute because of the delay in providing written notice of the damage.

Local Government Act – core policy decisions or operational decisions?

19. Next, the respondents say Victoria PD's decision to use CS gas was a core policy decision that was immune from negligence liability.
20. In *Nelson (City) v. Marchi*, 2021 SCC 41, the Supreme Court of Canada described "core policy decisions" as decisions about a course of action based on public policy considerations, like economic, social, and political factors, that are neither irrational nor taken in bad faith. Immunity from liability for these decisions exists to protect the legislative and executive branches of government's core institutional functions from interference by the judiciary in adjudicating private law matters. While core policy decisions are exempt from negligence claims, the "operational implementation of policy" is subject to private law principles of negligence. See *Marchi* at paragraphs 22 and 50.
21. At paragraphs 61 to 68, the Court in *Marchi* set out 4 factors for identifying core policy decisions:
 - a. The level and responsibility of the decision-maker. The higher the decision-makers' level within the executive branch of government and the greater their job responsibilities, the more likely their decision is to be core policy.
 - b. The process by which the decision is made. The more process there is in place to reach a government decision, the more likely it is that that decision will be core policy. The more a decision can be characterized as an employee's reaction to a particular event, the more likely it is to be reviewable for negligence.
 - c. The nature and extent of budgetary consideration. Budgetary decisions involving budgetary allotments for departments or government agencies are more likely to be core policy. Day-to-day budgetary decisions are less likely to be core policy.

- d. The extent to which the decision was based on objective criteria. If a government decision weighs competing interests and requires value judgments, it is more likely to be core policy. Where a decision is based on “technical standards or general standards of reasonableness” it is more likely to be reviewable for negligence.
22. The respondents argue that Victoria PD acted on the basis of public policy considerations that were not irrational or taken in bad faith. They say Victoria PD’s actions were governed by its written policies, including its Critical Incident Response policy and its Mental Health Apprehensions policy, which detail processes police must follow when dealing with threats. So, they say Victoria PD’s actions were core policy decisions.
23. Mr. Smith says Victoria PD was not acting in a policy-making capacity when the police attended his apartment on December 30, 2023. The officers were acting in a regular operational capacity in performance of their duties, with any core policy decisions having been made long before by members of the Police Board or the Chief Constable.
24. In undertaking various steps that can be involved in a wellness check and responding to an evolving situation, I find Victoria PD officers were practically implementing formulated policies that had already been through a higher-level decision-making process. In other words, they were making operational decisions based on “administrative direction, expert or professional opinion, technical standards or general standards of reasonableness.” There is no evidence the decisions Victoria PD made during the wellness check involved balancing public policy considerations. Those matters had already been determined at the development phase. For these reasons, I find the actions and decisions of Victoria PD in response to Mr. Smith’s report on December 30, 2023 were not core policy decisions that attracted immunity from negligence liability.

Negligence

25. Finally, Mr. Smith says the respondents were negligent. Section 20(1) of the *Police Act* says a municipality is liable for a tort committed by a police officer, among others, in the performance of their duties.
26. To prove negligence, Mr. Smith must show 1) Victoria PD owed him a duty of care, 2) Victoria PD breached the applicable standard of care, 3) Mr. Smith suffered damage or loss, and 4) the damage or loss was caused by Victoria PD's breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. I find Victoria PD owed Mr. Smith a duty of care, as the public body tasked with investigating Mr. Smith's report of a potential crime committed against him.
27. In *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, the Supreme Court of Canada held that the applicable standard of care is that of a reasonable police officer in similar circumstances. Recognizing the tort of negligent investigation, the court applied the same standard.
28. Did Victoria PD breach the applicable standard in investigating Mr. Smith's report and carrying out its wellness check on LB? The respondents say Victoria PD responded appropriately, given that LB had punched Mr. Smith and threatened to kill him. Victoria PD attempted unsuccessfully to negotiate with LB all afternoon and well into the evening, using both officers and mental health professionals. Eight hours after Mr. Smith's report, members of GVERT secured a warrant and used CS gas as a "measure of reasonable force" to enter the apartment and apprehend LB under section 28 of the *Mental Health Act*.
29. Mr. Smith says Victoria PD should have used an "approach of de-escalation and exercise of less invasive measures", but he does not specify what these should have been. Instead, he says Victoria PD used excessive force and a "chemical weapon" that caused a reasonably foreseeable likelihood of damage to the apartment's contents.

30. I find there is no evidence Victoria PD used excessive force in deploying CS gas into Mr. Smith's apartment to safely apprehend LB and end an hours-long standoff. Based on police reports in evidence, I find Victoria PD conducted repeated real-time risk assessments to respond to circumstances that were evolving quickly and information that was being updated continuously. Following hours of failed negotiation with LB, who was reported to be "decompensating", Victoria PD contacted GVERT as a specialty resource to end the barricade. I find Victoria PD used appropriate escalation tactics under its Critical Incident Response policy as LB's mental health deteriorated, and properly apprehended LB under its Mental Health Apprehensions policy and the *Mental Health Act*.
31. Based on all the evidence before me, I find Mr. Smith has not proven Victoria PD officers breached the standard of care of a reasonable police officer in similar circumstances. It follows that Mr. Smith has not proven Victoria PD, and the respondents, were negligent.
32. Mr. Smith says he is at a disadvantage because as a low-income individual, he was unable to obtain expert evidence to prove Victoria PD was negligent. I find proving Victoria PD was negligent did not necessarily require expert evidence. The factual evidence submitted by the parties was enough to satisfy me that Mr. Smith's claims must fail.

CRT FEES AND DISPUTE-RELATED EXPENSES

33. 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. However, no party paid any CRT fees or claimed any dispute-related expenses.

ORDER

34. I dismiss Mr. Smtih's claims.

Megan Stewart, Tribunal Member