



Civil Resolution Tribunal

Date Issued: November 3, 2025

File: SC-2024-005165

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellesmere Farm Corporation v. British Columbia Ferry Services Inc.*, 2025
BCCRT 1532

B E T W E E N :

ELLESMERE FARM CORPORATION and FRANCINE TRACEY

APPLICANTS

A N D :

BRITISH COLUMBIA FERRY SERVICES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. The respondent, British Columbia Ferry Services Inc., provides ferry services. The applicant, Francine Tracey, is the director of the applicant, Ellesmere Farm Corporation (EFC). The applicants say they have suffered losses due to BC Ferries' failure to provide reliable service. The applicants claim \$5,000. I address the basis for this amount below.

2. BC Ferries says it has never breached a contract it had with either applicant. Further, BC Ferries argues the applicants' damages were not foreseeable. Finally, BC Ferries argues its terms of service prevents the applicants from bringing this type of claim for damages.
3. Ms. Tracey represents both applicants. BC Ferries is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I also find credibility is not a significant issue in this dispute. 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. CRTA section 42 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.
7. Under CRTA section 48(1), the CRT may make an order on terms and conditions it considers appropriate.

Constitutional rights

8. The applicants argue that BC Ferries violated Ms. Tracey's constitutional right to mobility. Under CRTA section 113, the CRT has no jurisdiction over constitutional questions. So, I do not address these arguments.

Claimed remedies

9. In the Dispute Notice, the applicants claim \$5,000 for a refund of all transportation costs paid by the applicants since May 1, 2020.
10. However, in submissions, the applicants change the basis of their claim. Instead of a refund, the applicants claim damages of \$15,840 for lack of reliable internet, \$5,000 for Ms. Tracey's wasted time due to ferry cancellations and late ferries, and \$6,600 for EFC's lost produce sales. They reduce the overall amount to \$5,000, to fit within the CRT's small claims monetary limit.
11. The Dispute Notice is intended to narrow issues between the parties. However, BC Ferries provided submissions specifically on the applicants' updated claims, continuing to deny liability for them. The total amount of the applicants' claims do not change. So, as I find there is no prejudice to BC Ferries and, keeping in mind the CRT's mandate to be flexible and efficient, I find it appropriate to consider the applicants' updated claims.

ISSUES

12. The issues in this dispute are:
 - a. Is Ms. Tracey entitled to damages for lack of internet?
 - b. Is Ms. Tracey entitled to damages for wasted time?
 - c. Is EFC entitled to damages for lost produce sales?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. I note the applicants' submissions are long, repetitive, and make many arguments about BC Ferries generally. I accept that the applicants are unhappy with BC Ferries' service. However, I find addressing each individual argument, including those that do not relate to the applicants' claimed damages, would be disproportionate to the amount claimed in this dispute. So, I only address those arguments that I find relevant to the applicants' claims.
15. Though BC Ferries does not specifically comment on the applicants' evidence, I find the following undisputed background to this dispute.
16. Ms. Tracey is the sole director of EFC, which is located on Vancouver Island. Ms. Tracey lives in the Lower Mainland, and is also a mortgage broker and real estate agent. She performs this other work through different, non-party corporations.
17. I accept that the above means that Ms. Tracey splits her time between the island and the Lower Mainland. I also accept that this requires Ms. Tracey to make frequent trips by ferry between the island and the Lower Mainland.
18. Very broadly, the applicants allege that since 2020, BC Ferries has had significant difficulties with crew shortages and ferry repairs. They say this has made ferries unreliable and caused Ms. Tracey wasted time due to ferry cancellations and delays. In turn, this has resulted in a loss of profits for EFC due to its inability to sell perishable goods in the Lower Mainland.
19. In response, BC Ferries says that it is not liable for the applicants' claims, which are prohibited by its terms and conditions and conditions of carriage. It also argues it was not negligent, and even if it was, the applicants' damages are too remote.
20. I turn to the applicants' specific claims.

Is Ms. Tracey entitled to damages for lack of internet?

21. Ms. Tracey says she is unable to work while she is on the ferry because BC Ferries does not provide Wi-Fi service on its vessels. Ms. Tracey says because other ferries and airlines provide Wi-Fi service, BC Ferries should as well. Based on a calculated \$96 hourly wage and 2 trips per month over 33 months, Ms. Tracey says this loss is \$15,840.
22. BC Ferries says it does not make any representations or warranties about having Wi-Fi service on its vessels. So, it says it is not liable to Ms. Tracey for these losses.
23. I agree with BC Ferries' position. Ms. Tracey does not point to any evidence BC Ferries agreed to provide Wi-Fi service. Instead, I find by her submissions, she agrees BC Ferries did not advertise Wi-Fi services or agree to provide them, but that BC Ferries should provide them.
24. While Wi-Fi service may be a convenience to passengers, Ms. Tracy does not point to any legal basis requiring BC Ferries to provide it.
25. For these reasons, I dismiss this claim.

Is Ms. Tracey entitled to damages for wasted time?

26. Ms. Tracey claims that she has wasted personal time due to ferry cancellations, late ferries, and arbitrary cancellations. She claims 1.6 hours per month for 33 months. At her \$96 hourly rate, Ms. Tracey says this loss is roughly \$5,000.
27. Ms. Tracey says that the Coastal Ferry Services Contract and the *Coastal Ferry Act* (CFA) section 43 require that BC Ferries not reduce service without authorization from the commissioner.
28. BC Ferries says that Ms. Tracey is not a party to the Coastal Ferry Services Contract, which is between BC Ferries and the provincial government. BC Ferries does not specifically dispute breaching CFA section 43. However, BC Ferries says

there were no representations, warranties, or agreements made with Ms. Tracey or EFC.

29. BC Ferries relies on its terms and conditions and conditions of carriage, and provided a copy of each. These say BC Ferries is not liable for any loss, damage or inconvenience from late, delayed, or cancelled sailings.
30. In response, Ms. Tracey argues that the applicants are third-party beneficiaries under the Coastal Ferry Services Contract and are entitled to rely on its provisions, which were intended for their benefit.
31. I accept Ms. Tracey's evidence that she has experienced ferry delays and cancellations. However, the law does not recognize an action for negligent breach of statutory duty, and a breach of a statutory duty by itself does not constitute negligence. See: *The Queen in Right of Canada v. Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC).
32. Instead, I find the CFA is intended to be enforced through penalties assessed by the commissioner under CFA Division 3. On Ms. Tracey's own evidence, BC Ferries has been assessed at least one fine, I infer for breaches of the CFA. So, I find here Ms. Tracey is not entitled to bring use the CFA as a basis for a negligence claim.
33. I also agree with BC Ferries that Ms. Tracey is not a party to the Coastal Ferry Services Contract and she is not entitled to rely on it. Instead, I must consider what the parties agreed to.
34. BC Ferries provided a copy of its online booking page, which requires a party to click that they accept, among other things, BC Ferries' terms and conditions and conditions of carriage. It also provided a sample physical ticket, which shows similar wording on the back.
35. Ms. Tracey says she purchased her tickets through the BC Ferries' app, which has no such wording. Ms. Tracey says all she could find online were the conditions of carriage. As I note above, the conditions of carriage contains a term that removes

BC Ferries' responsibility for any loss, damage, or inconvenience from late, delayed, or cancelled ferries.

36. I am not persuaded by Ms. Tracey's argument that she was unaware of BC Ferries' terms. She provided photos of many physical tickets she has purchased, and no evidence that when she purchased tickets on the app there was no reference to BC Ferries' conditions of carriage.
37. BC Ferries was not required to force Ms. Tracey to read the conditions of carriage for her to be bound by them. See: *Hazell v. DoorDash Technologies Canada Inc.*, 2022 BCSC 2497 at paragraph 74. So, I find by purchasing tickets, Ms. Tracey agreed to be bound by BC Ferries' conditions of carriage.
38. As I find Ms. Tracey is not entitled to rely on the CFA or the Coastal Ferry Services Contract, I find BC Ferries' conditions of carriage apply. It follows that Ms. Tracey is not entitled to damages for ferry delays or cancellations and I dismiss this claim.

Is EFC entitled to damages for lost produce sales?

39. The applicants argue that due to BC Ferries' repeated delays, Ms. Tracey has not been able to make use of her connections in the Lower Mainland to sell EFC's produce. Ms. Tracey says she does not have the same connections on the island, so is unable to make the sales there. EFC claims \$200 per month in lost produce for 33 months, which is roughly \$6,600.
40. For the same reasons I give above, I find EFC is not entitled to damages for delayed or cancelled ferries.
41. Even if BC Ferries were liable for damages, I find EFC did not prove its damages. EFC provided very limited evidence about how it calculated the \$200 per month in lost produce. It provided no evidence of Ms. Tracey's or EFC's efforts to sell locally, or evidence of Ms. Tracey's connections in the Lower Mainland.
42. Based on the above, I dismiss this claim.

43. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. While BC Ferries was successful, it did not pay any fees. I dismiss the applicants' claim for reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

ORDER

44. I dismiss the applicants' claims.

Amanda Binnie, Tribunal Member